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# *Documents in* A m e r i c a n Government

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C O R N E L L U N I V E R S I T Y

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*By* CLINTON L. ROSSITER



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## PREFACE

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THIS book is designed for use as a supplementary text in courses in American national government. I have been convinced by experience and by conversations with teachers in many other colleges that students in these courses all too often are reading too much secondary, interpretive material at the expense of the more difficult, yet more rewarding, primary sources. In this golden age of second-hand information they, like their elders, discuss European recovery, congressional reorganization, and the Taft-Hartley Act without having read the documents on these subjects. If they are to become informed, clear-thinking citizens, they must acquire the habit of independent inquiry into undiluted sources of information. In a modest attempt to make available to these students some of the important documents of our government, I have put this collection together. I hope that other citizens, too, may read these pages with profit.

These sixty-four documents include laws, resolutions, treaties, agreements, codes, proclamations, executive orders, and presidential messages. With three self-explanatory exceptions—the Resolutions of the Governors' Conference, New York Election Laws, and Rules of the Republican National Convention—they are both public and national. One major category of documents, the opinions of the Supreme Court, has been arbitrarily excluded. Such cases as *Marbury v. Madison* and *McCulloch v. Maryland* are already available for student reading in many other

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books, and were I to include all those cases that are rightly considered basic documents of American government, there would be no end to a book that has been kept purposely small in an effort to fill one, not all, of our textual needs.

The documents are of two kinds. Some are *basic*, the only ones that could have been chosen for a particular section: the Nationality Code under Citizenship and Suffrage, the Legislative Reorganization Act under Congress, and the Economic Cooperation Act under Foreign Relations. Others are *illustrative*, since in such matters as the Federal System and Civil Liberties there is no single document upon which we can all agree as basic. As there was room for choice, so there will be room for criticism. In these instances I have been guided by the advice of others more practiced than I in the teaching of American government, as well as by a desire to present the most recent official sources.

Some of the documents illustrate two or more major aspects of American government and should therefore be read under several headings. For example, the Morrill Act of 1862, which is to be found in the chapter on the General Welfare, is also an important document illustrating the problems of federalism. Chapters II and XVII have been intentionally left small so that documents in other chapters may be read in conjunction with them.

I am grateful to my friends in Cornell University, Professor Lewis W. Morse, Librarian of the Law School, and Mr. John P. Roche of the Department of Government, and to Mr. Andrew J. Berry, III, of Bronxville, New York, for their cordial assistance in compiling and editing these documents.

CLINTON L. ROSSITER.

Ithaca, New York,  
January, 1949.

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## THE DECLARATION AND THE CONSTITUTION

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THE documentary study of American government begins with the fundamental law. The Constitution is a document that clearly demands, and rarely receives, painstaking analysis and contemplation. As it is the most lucid and frugal of all basic charters written for the governing of men, so it has been the most successful and enduring.

Chronologically, the Constitution may be conveniently divided into three parts: the original document, which includes the Preamble and Articles I through VII; the so-called Bill of Rights, consisting of the first ten Amendments; and Amendments XI through XXI, added to the Constitution at irregular intervals between 1798 and 1933.

The original Constitution was the work of a conservative, hardheaded, gifted group of men who met in Philadelphia in May, 1787, instructed to rebuild the crumbling Articles of Confederation, but destined to erect an entirely new framework of government for the restless and friendless infant republic. Drawing upon the texts of the state constitutions (especially those of New York and Massachusetts) and the political writings of such worthies as Locke and Montesquieu, and above all upon their own experiences in the governments and armies of the Revolution, they argued and compromised their way through the sweltering summer. Thirty-nine of the fifty-five who attended stayed to the end and, to the delight of their descendants, subscribed their names to the finished work. Prominent among them were George Washington, a patient and influential presiding officer; James Madison, who won for



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himself the title of "The Father of the Constitution"; Benjamin Franklin, the great conciliator; Gouverneur Morris, who drafted the document in its final form; Alexander Hamilton, James Wilson, Roger Sherman, and John Dickinson. Although we no longer look upon these men as "an assembly of demigods," we acknowledge with gratitude their transcendent political wisdom. Like the Constitution they wrote, their reputation takes on added luster with the passing of the years.

The first ten Amendments were an early addition. The ratification of the Constitution by the states had been obtained only after a bitter and protracted struggle. The most forcible objection leveled against its adoption was the absence of an explicit declaration of individual liberties. In several states the price paid for ratification by the proponents of the Constitution was an agreement that the first Congress would draw up amendments designed to protect the rights of the people against encroachment by the new national government. The first ten Amendments went into force December 15, 1791.

The third part of the present Constitution is the result of a slow and sporadic process of accretion. Amendments to the Constitution do not come easily. Although several thousand have been introduced in Congress since 1791, only fifteen have been proposed by the necessary two thirds of Congress, and only eleven ratified by the necessary three fourths of the states. Each of the eleven constitutes a significant chapter in American constitutional history.

Fortunately for the American people, and for their Constitution as well, there are other ways than the laborious amending process to alter the written document in answer to the requirements of a changing civilization. "We must never forget," said John Marshall, "that it is a *constitution* we are expounding," and he might just as well have said "expanding." The fundamental law may often be behind the times, but never too far and rarely for too long. Old words take on new meanings—"commerce," "due process," and "the general welfare," for example—and the Constitution moves forward with the nation. Moreover, it must be remembered that the written Constitution and its amendments form only a part of the total

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constitution that organizes and regulates the American government.

*Statutes* like the Judiciary Act of 1789 and the Presidential Succession Act of 1947; *Supreme Court decisions* like *Marbury v. Madison* and *McCulloch v. Maryland*; *executive precedents* such as those established by Washington in his conduct of foreign relations; institutions and procedures based on *custom* such as the President's Cabinet and the practice of senatorial courtesy; and even *political arrangements* like the national nominating conventions—these, too, are included in the total constitution.

This document is the written expression of a definite philosophy of government. As such, it contains a number of features unique or uncommon in 1787 and still valid today as basic principles of our governmental system. Among those that the Constitution expresses or implies and the inquiring student should discover for himself are: the *written* constitution, republicanism, federalism, the separation of powers, the system of checks and balances, majority rule and minority rights, civil supremacy, the separation of church and state, and the noble concept of limited government. Significant, too, is the lack of any appeal to heaven or mention of political parties. The Constitution was the work of men with a conservative bent of mind, interested in building a constitutional, not a democratic, government. Yet they wrote a charter that, if it did not foster, nevertheless did not prevent, the rise of a vigorous American democracy. And we know today that before America could be democratic, it had to be constitutional.

Before the Constitution there was the Declaration. The resolution of July 4, 1776, has been placed in these pages with a purpose. For one thing, it is instructive to compare a document written by men determined "to dissolve the political bands which have connected them with another" with one written by men equally determined "to form a more perfect union." For another, it is interesting to note how many grievances against the King in the Declaration became prohibitions on the new government in the Constitution and Bill of Rights. The Declaration of Independence, when read with the Constitution, pro-

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vides an excellent opportunity for the comparative study of primary historical sources.

### DECLARATION OF INDEPENDENCE

On June 7, 1776, Richard Henry Lee of Virginia introduced in the Continental Congress at Philadelphia a resolution declaring the independence of the united colonies. A committee consisting of Jefferson, Franklin, John Adams, R. R. Livingston, and Roger Sherman was appointed to draft a declaration of independence. Lee's resolution was adopted July 2, the Declaration of Independence two days later. All but a few words of this illustrious document are from the felicitous pen of Thomas Jefferson.

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When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience

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hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in

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the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary

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government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us not of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable

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jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our Sacred Honor.

## CONSTITUTION OF THE UNITED STATES OF AMERICA

The first session of the Constitutional Convention was held May 25, 1787, the last September 17. The nine ratifications necessary to the establishment of the Constitution were achieved June 21, 1788. Shortly thereafter the key states of Virginia and New York fell into line, and the Constitution went into full effect April 30, 1789, upon the inauguration of George Wash-

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ington as first President. This version employs modern spelling and capitalization. Provisions that have been superseded or modified by later amendments are enclosed in brackets.

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We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

### ARTICLE I

#### *Section I*

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

#### *Section II*

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, [which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and] excluding Indians not taxed, [three fifths of all other persons.] The actual enumeration shall be made



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within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

### *Section III*

1. The Senate of the United States shall be composed of two Senators from each State [chosen by the legislature thereof] for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; [and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.]

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3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

### *Section IV*

1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

[2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.]

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### *Section V*

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

### *Section VI*

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have

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been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

### *Section VII*

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, accord-

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ing to the rules and limitations prescribed in the case of a bill.

### *Section VIII*

1. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post-offices and post-roads;

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute

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the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

### *Section IX*

1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation or other direct tax shall be laid, unless

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in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

### *Section X*

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, un-

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less actually invaded or in such imminent danger as will not admit of delay.

### ARTICLE II

#### *Section I*

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such a number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote;



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a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

3. The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.

4. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

6. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

7. Before he enter on the execution of his office he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully

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execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States.”

### *Section II*

1. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

### *Section III*

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement

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between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

### *Section IV*

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III

### *Section I*

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

### *Section II*

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; [between a State and citizens of another State;] between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

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2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

### *Section III*

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

## ARTICLE IV

### *Section I*

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

### *Section II*

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

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2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

### *Section III*

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

### *Section IV*

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

## ARTICLE V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for pro-

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posing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

### ARTICLE VI

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

### ARTICLE VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

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### AMENDMENTS TO THE CONSTITUTION

#### ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

#### ARTICLE II

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

#### ARTICLE III

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

#### ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### ARTICLE V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall

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private property be taken for public use without just compensation.

### ARTICLE VI

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

### ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### ARTICLE IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

### ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

### ARTICLE XI [1798]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced



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or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

### ARTICLE XII [1804]

The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two third of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, [before the fourth day of March] next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

## THE DECLARATION AND THE CONSTITUTION

The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

### ARTICLE XIII [1865]

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

### ARTICLE XIV [1868]

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or

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the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## ARTICLE XV [1870]

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

### ARTICLE XVI [1913]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

### ARTICLE XVII [1913]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

### ARTICLE XVIII [1919]

[SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall

## THE DECLARATION AND THE CONSTITUTION

have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]

### ARTICLE XIX [1920]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

The Congress shall have power to enforce this article by appropriate legislation.

### ARTICLE XX [1933]

SECTION 1. The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice-President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice-President elect shall have qualified, declaring who shall then act as President,

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or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three fourths of the several States within seven years from the date of its submission.

## ARTICLE XXI [1933]

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by convention in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

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## THE FEDERAL SYSTEM

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FOREIGN observers find much to wonder at in the American constitutional system. The feature most generally singled out for analysis and imitation is the federal pattern of government. As far as the rest of the world is concerned, federalism is the great American political invention. Interest in this aspect of our government has been especially keen since the end of World War II. The more men speak of world federalism, the more they study American federalism.

The American federal system, under which two independent governments exercise original authority over the same area and same people, is to be clearly distinguished from a league of sovereign states on the one hand and a central government operating through convenient territorial subdivisions on the other. It was long ago decided that the United States did not form a confederacy that could be broken up at the pleasure of its member states. It was decided even earlier that the states did not exist at the pleasure of the national government. The essence of American federalism was best expressed by Chief Justice Chase in *Texas v. White* (1869): "The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

The good people who ground their hopes for world federalism on the success of the American adventure overlook a truth of which Chase also reminded us: "The Union of the States was never a purely artificial and arbitrary relation." No master plan governed the establishment of American federalism; rather, it was the consequence of an historical process that began with the granting of the first royal charter and ended

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with the adoption of the Constitution. The close of the Revolution found a half-way federalism already established, and the framers wrote a bold climax to this historical process. A new process then commenced. The clauses of the Constitution that fix the relations of nation and states—Article I, sections 3, 8, and 10; Article VI, paragraphs 2 and 3; Amendments X and XI—bear witness to the intuitive political genius of the men who accepted and strengthened the incipient federalism of the Articles of Confederation.

Although the federal system rests upon the fixed foundations of an indissoluble union and indestructible states, the relations of national and state governments are plastic and changing. American federalism today is quite different from what it was in 1789; there have been two pronounced alterations in the outlines of the federal structure. The first is the ever-increasing importance of the national government, a pattern of change that was especially pronounced in the period following the close of the Civil War and has been given new impetus by each of the severe crises through which the nation has subsequently passed. This trend has been strongly resisted, and not just by those politicians out of power in Washington who speak warmly, if anachronistically, of the "sovereign state" of Vermont or Alabama or Texas. Many political scientists believe that in our system of checks and balances the most important check of all is that which the existence of the states places upon the authority of the government at Washington. The fight for "state rights," real or alleged, will doubtless continue, and it may be safely predicted that the states will be with us for generations to come. Only revolution and dictatorship could end the federal system. Nevertheless, the centralizing process of the past eighty-five years seems to have been largely irresistible. If the national government grows ever more powerful, it is because the problems delegated to it for solution grow ever more pressing. War, whether hot or cold, is a monopoly of the national government.

The second change in the federal pattern is the shift from *competition* to *cooperation*. The concept of federalism that dominated the minds of the framers—and was strengthened by the events leading to the Civil War—was that of isolation and



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hostility. It was believed that the national government had one set of purposes and problems, the state government, another; each was to go its own way without much interference from or contact with the other. It was assumed that contact would mean conflict, and just as Article VI, paragraph 2, of the Constitution ensured the supremacy of the national government within its own sphere, so the Tenth Amendment ensured the independence of the states in the pursuit of their own ends. This mutual jealousy was considered to be a bulwark of American freedom.

Today the emphasis is on cooperation. We believe that the federal system, if it is to justify its existence, must permit a common attack on common problems of which the framers never dreamed. There can be no "twilight zone" between nation and state. The astounding growth of federal-state cooperation in this century has been effected chiefly through the system of "grants-in-aid." Under this arrangement the national government appropriates money for state services and activities. Such grants are conditional, since a state, to be eligible for assistance under any particular program, must spend federal money as directed by federal law, put up a certain amount of its own, and recognize the right of some agency in Washington to fix conditions, standardize methods of operation, and inspect results. Among the important activities that the states carry on today with the assistance of the national government are social security, education, conservation, highway construction, and the maintenance of the organized militia. This trend will doubtless continue as the national and state governments render more and more positive services to the American people. The outlines of the new federalism are evident in the documents printed in this chapter—a typical law providing for conditional grants-in-aid and the most recent official expression of state thinking concerning this trend—as well as in the two important laws in Chapter XIV.

### GRANTS TO STATES FOR AID TO THE BLIND

Title X of the Social Security Act of 1935, as amended, is an excellent example of cooperative federalism. In the process of encouraging the states to institute or expand programs of aid to

## THE FEDERAL SYSTEM

the blind, the national government has effectively increased its own power in this area of the general welfare. Particular attention should be paid to the conditions established by section 1002. All but a handful of the states have met these conditions and are currently receiving federal grants to carry on their programs of aid to the blind. The "Administrator" mentioned throughout the act is the Federal Security Administrator.

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### APPROPRIATION

SEC. 1001. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of \$3,000,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Administrator, State plans for aid to the blind.

### STATE PLANS FOR AID TO THE BLIND

SEC. 1002. (a) A State plan for aid to the blind must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Adminis-

## THE FEDERAL SYSTEM

trator shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Administrator to be necessary for the proper and efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Administrator may from time to time require, and comply with such provisions as the Administrator may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the blind; and (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the blind.

(b) The Administrator shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

## PAYMENT TO STATES

SEC. 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has

## THE FEDERAL SYSTEM

an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1946, (1) an amount, which shall be used exclusively as aid to the blind, equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the blind under the State plan with respect to each needy individual who is blind and is not an inmate of a public institution, not counting so much of such expenditure with respect to any such individual for any month as exceeds \$45—

(A) Two-thirds of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$15 multiplied by the total number of such individuals who received aid to the blind for such month, plus

(B) One-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A); and (2) an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Administrator for the proper and efficient administration of the State plan, which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Administrator shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from

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which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigations as the Administrator may find necessary.

(2) The Administrator shall then certify to the Secretary of the Treasury the amount so estimated by the Administrator, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Administrator, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Administrator for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Administrator, the amount so certified.

## OPERATION OF STATE PLANS

SEC. 1004. In the case of any State plan for aid to the blind which has been approved by the Administrator, if the Administrator, after reasonable notice and opportunity

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for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1002 (a) to be included in the plan; the Administrator shall notify such State agency that further payments will not be made to the State until he is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

.....

### RESOLUTIONS ADOPTED BY THE GOVERNORS' CONFERENCE, 1948

The resolutions of the fortieth annual Conference of State Governors demonstrate the mixed attitude of the officials currently charged with the vindication of the federal system. Gratitude for federal assistance, resentment against the federal encroachment that inevitably accompanies such assistance, realization that interstate cooperation must be increased to offset the nationalizing trend, and resistance to federal aid to local agencies are jumbled together in these interesting resolutions.

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## I. TAX AND FISCAL POLICY

To achieve a higher degree of efficiency, reduce duplication, and achieve economy and stability of our coordinated system of federal, state, and local governments, our states and their citizens must cease relying upon the federal gov-

## THE FEDERAL SYSTEM

ernment to perform services for them that they could do for themselves as well as, or better, than the federal government. In order that the state and local governments may be able to assume those functions, the federal government should withdraw from or reduce those taxes which can be best administered by state and local governments.

The Governors' Conference will support federal-state programs designed to coordinate federal-state services and fiscal structures, and eliminate any overlapping and wasteful duplication that may exist therein. We believe we should seek to develop:

1. Adequate standards of service responsibility to the end that governmental services may be allocated to that level of government which can most effectively recognize and meet local needs;

2. Adjustments in our tax structures designed to assure a fair and equal application of existing taxes to all taxpayers, as well as a fair apportionment of the total tax burden among all those who either pay or should be paying a share of the cost of government.

The Governors' Conference heartily approves the demonstration of federal-state cooperation evidenced in the conferences of its Special Committee on Tax and Fiscal Policy with representatives of the Congress during the past year. In view of the importance of the problems involved in tax and fiscal policy and because of its admirable accomplishments to date, the Special Committee on Tax and Fiscal Policy of the Governors' Conference is hereby continued and authorized and directed to further develop proposals for tax coordination between federal and state governments in cooperation with appropriate federal authorities.

The Senate Finance Committee, the Senate Committee on Expenditures in the Executive Departments, the House Ways and Means Committee, and the House Committee on Expenditures in the Executive Departments, of the United

## THE FEDERAL SYSTEM

States Congress are requested to continue or reconstitute their respective subcommittees to work in cooperation with the Governors' Conference toward coordination of policy and administration in the twin problems of federal and state services and tax structures.

### II. INTERSTATE ACTIVITIES

Increasingly the states are establishing and developing joint cooperative programs for regional institutional care, regional education facilities, flood control, water pollution control, fire protection, and numerous other activities.

The establishment of such interstate programs demonstrates that the states can, on their own initiative and without federal financial assistance, supervision and control, administer activities which affect large areas of the nation.

This is entirely in accord with the principle that governmental services should be provided and administered by those levels of government which are closest to the people. It is a forceful demonstration that centralization of governmental power is not necessary to meet many problems that transcend state boundaries.

The Governors' Conference therefore strongly approves recent developments in the field of interstate cooperative activities, and urges that this method of handling common problems be used by the states even more extensively in the future. The Governors' Conference further urges that the Congress give its earliest approval to interstate compacts designed to accomplish these purposes.

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### IV. HIGHWAYS

Analysis discloses that the federal government is, and has been, collecting considerably more revenue from taxes on gasoline and highway users than has been expended for highway purposes. It appears that during the past nine years only \$1,547,800,000 of the \$5,911,000,000 collected



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therefrom has been appropriated by the federal government to aid road building.

Until such time as the federal government may withdraw from taxation on gasoline and highway users, the Governors' Conference is convinced that all revenue from these sources should be used for the purpose of expanding and improving the highway systems of the nation.

### V. AIRPORTS

The Governors' Conference has urged consistently and repeatedly that the development and construction of a national airport system should follow the long-established and eminently effective pattern of federal-state cooperation. The operation of the Federal Airport Act, which did not follow this pattern, clearly illustrates the impracticability of a federal agency attempting to deal with thousands of political subdivisions without reference to the states.

In practical operation there is no such thing as a federal-local pattern. Inevitably the federal government, through sheer weight of numbers and its superior power, assumes complete control over such a program. This has been amply demonstrated in two years of experience with the existing federal-aid airport program.

Therefore, the Governors' Conference again urges that the Congress take action, without further delay, to amend the Federal Airport Act to provide that all airport plans and programs affecting the several states be developed in cooperation with the states, that plans and programs within the several states be approved by the states, and that funds allocated for airports be channeled to and through state governments.

More than half of the states have taken action to insure that their political subdivisions will deal through an appropriate state aviation agency in applying for federal airport grants. The Governors' Conference urges that the re-

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maining states enact similar legislation at the next session of their legislatures.

### VI. CIVILIAN DEFENSE

The establishment and effective operation of an adequate civilian defense program is an all important part of the first line of security for the nation and the states. The exigencies of the world today make such a program vitally necessary.

The Governors' Conference therefore pledges its support of a properly conceived civilian defense program. The Conference wishes to emphasize—and experience with Civilian Defense during the last war has amply demonstrated—that efficient operation cannot be achieved unless the federal government will work with and through the state governments.

### VII. NATIONAL GUARD

The National Guard is a bulwark of defense and its members, who are giving unstintingly of their time and talents and who are making such a worthy contribution to the preparedness of this country, deserve the commendation of the citizenry of the Nation.

The Governors' Conference therefore goes on record as commending the membership of the National Guard for its noble contribution to our national security.

The Governors' Conference urges that the federal government give full consideration to expanding and strengthening the National Guard to every extent necessary.

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### IX. STATEHOOD FOR ALASKA AND HAWAII

The Governors' Conference hereby reiterates its sympathy with the recorded desire for statehood of the people of Alaska and Hawaii, and endorses the passage of suitable legislation by the Congress to achieve that end.

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CITIZENSHIP AND SUFFRAGE

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WE the people of the United States" is not an empty phrase. The sovereignty of the people, of the great body of American citizens, is the foundation of our democratic form of government. But who are American citizens, and what are the elements of citizenship?

The definition of the word "citizenship," American or otherwise, is a perplexing problem in political science. Although the Constitution of 1787 mentioned "citizens" seven times, it neither defined citizenship nor declared who should enjoy it. The framers apparently took it for granted that everyone would know what citizenship was and that every American would possess two kinds, state and national. The first of these was for them the more basic. The men who wrote the Fourteenth Amendment reversed this order, with the result that state citizenship now follows national automatically, but they failed again to get down to definitions.

Where the Constitution will not speak, the Supreme Court will. Said Justice Van Devanter in *Luria v. United States* (1913): "Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society." Membership in the American political society is governed by the Fourteenth Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." American citizenship is thus acquired in one of two ways: by birth or by naturalization. The latter is generally an individual

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process, but citizenship may also be bestowed collectively, as it was by the Fourteenth Amendment or the act of 1917 making Puerto Ricans "citizens of the United States." Important excerpts from the present law concerning acquisition and loss of American citizenship are included here.

Citizenship carries with it a variety of privileges, duties, and rights. The most important of these—and political scientists still cannot agree whether it is primarily a privilege, duty, or right—is the suffrage. Of course, not all citizens can vote. Most of the people who read these words are citizens but not voters. To enjoy this right and perform this duty, a person must first meet certain qualifications. For various reasons, principally that of convenience, the framers left it to the states to determine these qualifications. Every state in the Union has fixed at least three requisites for the suffrage: age (twenty-one in every state but Georgia); citizenship (now required by every state, since Arkansas gave way in 1926); and residence (six months to two years in the state and varying periods in county and election district). A state may also require a literacy test and the payment of a poll tax and may disqualify citizens for insanity, conviction of crime, and other such causes. A typical state suffrage law has been selected for this chapter.

Congress may protect the exercise of the national franchise against discriminatory statutes and administrative actions. A state may not disqualify a voter for any of the reasons listed in the Fifteenth and Nineteenth Amendments, and Congress has the power to enforce these articles "by appropriate legislation." Exactly how far this power extends is a matter of bitter controversy. It is likely that the next few years will see section 2 of the Fifteenth Amendment called into action on an important scale for the first time in many decades. The present meager legislation to protect the federal suffrage is to be found in the third document of this chapter.

## NATIONALITY CODE

One of the most useful statutes of recent times was the Nationality Act of 1940, which amended and codified the confusion of citizenship and naturalization laws that had accumulated over the years. The provisions of this law and its recent

## CITIZENSHIP AND SUFFRAGE

additions printed here are taken from Title 8, Chapter 11, of the United States Code. A careful study of them should clarify many confusing points concerning the manner in which American citizenship may be won or lost.

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### SUBCHAPTER I—DEFINITIONS

SEC. 501. For the purposes of this chapter—

(a) The term “national” means a person owing permanent allegiance to a state.

(b) The term “national of the United States” means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

.....

### SUBCHAPTER II—NATIONALITY AT BIRTH

SEC. 601. The following shall be nationals and citizens of the United States at birth:

(a) A person born in the United States, and subject to the jurisdiction thereof;

(b) A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe . . . ;

(c) A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions, prior to the birth of such person;

(d) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) A person born in an outlying possession of the United States of parents one of whom is a citizen of the

## CITIZENSHIP AND SUFFRAGE

United States who resided in the United States or one of its outlying possessions prior to the birth of such person;

(f) A child of unknown parentage found in the United States, until shown not to have been born in the United States;

(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation.

.....

(i) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the

## CITIZENSHIP AND SUFFRAGE

United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of the termination of hostilities in the present war as proclaimed by the President or determined by a joint resolution by the Congress and who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of twelve years, the other being an alien: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

SEC. 602. All persons born in Puerto Rico on or after April 11, 1899, subject to the jurisdiction of the United States, residing on the effective date of this chapter in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States.

SEC. 603. (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

.....

SEC. 604. Unless otherwise provided in section 601, the following shall be nationals, but not citizens, of the United States at birth:

## CITIZENSHIP AND SUFFRAGE

(a) A person born in an outlying possession of the United States of parents one of whom is a national, but not a citizen, of the United States;

(b) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have resided in the United States, or one of its outlying possessions prior to the birth of such person.

(c) A child of unknown parentage found in an outlying possession of the United States, until shown not to have been born in such outlying possession.

SEC. 605. The provisions of section 601, subsections (c), (d), (e), and (g), and section 604, subsections (a) and (b), hereof apply, as of the date of birth, to a child born out of wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

.....

### SUBCHAPTER III—NATIONALITY THROUGH NATURALIZATION

SEC. 701. (a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States now existing, or which may hereafter be established by Congress in any State, District Courts of the United States for the Territories of Hawaii and Alaska, and for the District of Columbia and for Puerto Rico, and the District Court of the Virgin Islands of the United States; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdictions of such courts, except as otherwise specifically provided in this chapter.

.....



## CITIZENSHIP AND SUFFRAGE

(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this chapter, and not otherwise.

.....

SEC. 703. The right to become a naturalized citizen under the provisions of this chapter shall extend only to—

(1) white persons, persons of African nativity or descent, and persons who are descendants of races indigenous to the continents of North or South America or adjacent islands and Filipino persons or persons of Filipino descent;

(2) persons who possess, either singly or in combination, a preponderance of blood of one or more of the classes specified in clause (1);

(3) Chinese persons and persons of Chinese descent, and persons of races indigenous to India; and

(4) persons who possess, either singly or in combination, a preponderance of blood of one or more of the classes specified in clause (3) or, either singly or in combination, as much as one-half blood of those classes and some additional blood of one of the classes specified in clause (1). . . .

SEC. 704. No person except as otherwise provided in this chapter shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot speak the English language. This requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized.

SEC. 705. No person shall hereafter be naturalized as a citizen of the United States—

(a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that advises, advocates, or teaches opposition to all organized government; or

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization,

## CITIZENSHIP AND SUFFRAGE

association, society, or group that believes in, advises, advocates, or teaches—

- (1) the overthrow by force or violence of the Government of the United States or of all forms of law; or
- (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or
- (3) the unlawful damage, injury, or destruction of property; or
- (4) sabotage.

.....

The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses [classes] enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes.

.....

SEC. 707. (a) No person, except as hereinafter provided in this chapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well

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disposed to the good order and happiness of the United States.

.....

SEC. 711. A person who upon the effective date of this section is married to or thereafter marries a citizen of the United States, or whose spouse is naturalized after the effective date of this section, if such person shall have resided in the United States in marital union with the United States citizen spouse for at least one year immediately preceding the filing of the petition for naturalization, may be naturalized after the effective date of this section upon compliance with all requirements of the naturalization laws with the following exceptions:

(a) No declaration of intention shall be required.

(b) The petitioner shall have resided continuously in the United States for at least two years immediately preceding the filing of the petition in lieu of the five-year period of residence within the United States and the six months' period of residence within the State where the naturalization court is held.

SEC. 712. An alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:

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- (a) No declaration of intention shall be required; and
  - (b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required.
- .....

SEC. 727. (a) The Commissioner,<sup>1</sup> or, in his absence, a Deputy Commissioner, shall have charge of the administration of the naturalization laws, under the immediate direction of the Attorney General, to whom the Commissioner shall report directly upon all naturalization matters annually and as otherwise required.

(b) The Commissioner, with the approval of the Attorney General, shall make such rules and regulations as may be necessary to carry into effect the provisions of this subchapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States.

(c) The Commissioner is authorized to promote instruction and training in citizenship responsibilities of applicants for naturalization.

.....

SEC. 731. An applicant for naturalization shall make, under oath before, and only in the office of, the clerk of court or such clerk's authorized deputy, regardless of the place of residence in the United States of the applicant,

<sup>1</sup>The Commissioner of Immigration and Naturalization in the Department of Justice.

## CITIZENSHIP AND SUFFRAGE

not less than two nor more than seven years at least prior to the applicant's petition for naturalization, and after the applicant has reached the age of eighteen years, a signed declaration of intention to become a citizen of the United States. . . .

SEC. 732. (a) An applicant for naturalization shall, not less than two nor more than seven years after such declaration of intention has been made, make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing. . . .<sup>1</sup>

SEC. 733. (a) The Commissioner or a Deputy Commissioner shall designate members of the Service to conduct preliminary hearings upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such court. . . .

(b) The findings of any such designated examiner upon any such preliminary hearing shall be submitted to the court at the final hearing upon the petition with a recommendation that the petition be granted, or denied, or continued, with the reasons therefor. . . .

SEC. 734. (a) Every final hearing upon petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose.

.....

(e) It shall be lawful at the time and as a part of the naturalization of any person, for the court, in its discretion, upon the prayer of the petitioner included in the petition for naturalization of such person, to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith.

<sup>1</sup> Both the declaration of intention and petition contain a full description of the applicant and the facts of his life.

## CITIZENSHIP AND SUFFRAGE

SEC. 735. (a) A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court (1) to support the Constitution of the United States, (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen, (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same.

.....

(c) In case the person petitioning for naturalization has borne any hereditary title, or has been of any of the orders of nobility in any foreign state, the petitioner shall, in addition to complying with the requirements of subsections (a) and (b) of this section, make under oath in open court, in the court to which the petition for naturalization is made, an express renunciation of such title or order of nobility. . . .

SEC. 738. (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

.....

## SUBCHAPTER IV—LOSS OF NATIONALITY

SEC. 801. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

## CITIZENSHIP AND SUFFRAGE

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: *Provided, however,* That nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States. . . .

(b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or

(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

(d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(g) Deserting the military or naval service of the United States in time of war, provided he is convicted thereof by a court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military or naval forces . . . or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against, the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction; or

(i) Making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the

## CITIZENSHIP AND SUFFRAGE

Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States. . . .

## NEW YORK ELECTION LAWS

No two states approach the establishment of suffrage qualifications in exactly the same manner. Nevertheless, those fixed by the other forty-seven states are quite similar to these provisions of the New York law.

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### ARTICLE 7—REGISTRATION AND ENROLLMENT OF VOTERS

SEC. 150. A person is a qualified voter in any election district for the purpose of having his or her name placed on the register if he or she is or will be on the day of the election qualified to vote at the election for which such registration is made. A qualified voter is a citizen who is or will be on the day of election twenty-one years of age, and who has been an inhabitant of the state for one year next preceding the election, and for the last four months a resident of the county, city or village and for the last thirty days a resident of the election district in which he or she offers his or her vote, provided, however, that in any election district in which registration is not required to be personal, no elector who is registered and otherwise qualified to vote at an election, shall be deprived of his or her right to vote by reason of his or her removal from one election district to another election district in the same county within the thirty days next preceding the election at which he or she seeks to vote, and every such elector shall be en-



## CITIZENSHIP AND SUFFRAGE

titled to vote at such election in the election district from which he or she has so removed. If a naturalized citizen, such person must, in addition to the foregoing provisions, have been naturalized at least ninety days prior to the day of election. In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred and twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. . . .

SEC. 151. For the purpose of registering and voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison. . . .

SEC. 152. (1) No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or any other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or for registering or refraining from registering as a voter, or who shall make any promise to influence the giving or withholding any such vote or registration, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of an election, shall vote at such election.

(2) No person who has been convicted of a felony, pursuant to the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the governor, or received a certificate of good conduct granted

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by the board of parole pursuant to the provisions of the executive law to remove the disability under this section because of such conviction. The governor, however, may attach as a condition to any such pardon a provision that any such person shall not have the right of suffrage until it shall have been separately restored to him.

(3) No person who has been convicted of a felony in a federal court, if the offense would constitute a felony under the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the president of the United States.

(4) No person who has been convicted of a felony in a federal court of an offense of which such court has exclusive jurisdiction, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the president of the United States.

(5) No person who has been convicted in another state for a crime which would constitute a felony under the laws of this state shall have the right to register for or vote at any election in this state unless he shall have been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state.

## ELECTIVE FRANCHISE

The entire contents of Title 8, Chapter 2 of the United States Code are printed here. Section 31 dates from 1870, Section 32 from 1865. Congress has done little to protect the federal suffrage. Moreover, such laws as the first of these are extremely difficult to enforce.

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SEC. 31. All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial sub-

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division, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

SEC. 32. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

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CIVIL LIBERTIES

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THE American people, it would seem, are in a constant state of agitation on the subject of liberty. The colonists talked much of the "rights of men and Englishmen" in the angry days before the Revolution; when they stopped talking and started fighting, they immediately wrote state constitutions that translated natural rights into civil rights. The citizens of the new republic were excited again in 1787-1788 and would not listen to the gentlemen who told them that the Constitution needed no specific declaration of rights. In 1861 two opposing concepts of liberty found decision on the field of battle. Today, with the extinction of liberty in other countries and the eruption of the "battle of civil rights," Americans are more concerned than ever with this fundamental problem.

The high regard we demonstrate for our rights is matched only by the high confusion of our thinking about them. We can understand that the concept of civil liberty arises naturally from the conditions of limited government. We believe strongly that there are some things government can do and others it cannot, certain areas to which its power extends and others that are not to be touched. But what are these rights? Where are they stated? Against whom are they protected, and by whom? Where is that blurred and shifting line between liberty and authority? These are questions that defy exact answer.

There has never been agreement on the full content of our liberties. For one thing, this content changes from one generation to the next—"New Liberties for Old," as the historian wrote. For another, different men cherish different liberties,

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and one man's freedom may be another man's bondage. There is no completely satisfactory method of classifying our complexity of rights, for no matter what division we make, some rights will appear under several headings. Most of them, however, answer one of three descriptions: personal, procedural, or property. Among the *personal* liberties to which Americans are entitled—and aliens enjoy most of them, too—are the right to life itself, which can be taken away only by “due process of law”; freedom of religion, thought, speech, and press; the right of assembly and petition; the equal protection of the laws, freedom of movement, and freedom from bodily restraint. The limited definition of treason in the Constitution is another protection of individual liberty. There are still others that derive from those listed, for example the right to strike and freedom of association.

*Procedural* rights are those that protect us from arbitrary treatment at the hands of the law. For example, a person seriously entangled with federal law has the constitutional right to a grand jury indictment and speedy and public trial by jury. He is further protected against unreasonable search and seizure, excessive bail and fines, self-incrimination, and double jeopardy. The writ of habeas corpus is every man's guarantee against arbitrary arrest and imprisonment (see pages 199–201). Congress and the state legislatures are forbidden to interfere with the course of justice by passing bills of attainder or *ex post facto* laws.

The rights of *property* are naturally of great consequence in a country where the principle of free private enterprise underlies the government and economy. “No taxation without representation,” not “Workers of the World, unite,” was the battle cry that led to our Revolution, and for many Americans the definition of a “police state” is a government that levies high taxes and fixes prices. The federal and state constitutions place life, liberty, and property side by side and are full of provisions that ensure equitable taxation, just compensation for property taken under eminent domain, and freedom of contract. In recent years there has been much talk of expanding the present limited concept of property rights into a full-fledged body of economic rights, under which the government would interpose

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its power and guarantee each citizen a job and a living wage, a decent home, medical care, education, and "protection from the economic fears." Franklin D. Roosevelt's annual message to Congress of 1944 called for the establishment in law of such a "Second Bill of Rights." In this regard, it is instructive to compare the American Bill of Rights with almost any postwar European constitution. The former emphasizes political rights by placing restraints on government in the name of "liberty"; the latter emphasizes economic rights by calling upon government to act in the name of "security."

These rights may also be classified according to their sources. Most of the primary freedoms are constitutionally defined. The student of American government can engage in no more profitable documentary exercise than to read for himself the federal Constitution and the constitution of his state, and list the protections that he finds in each. Yet he must go further in his study, for additions and refinements, as well as restrictions, are strewn through the statute books, the common law, and the decisions of the courts. The great decisions of the Supreme Court by which the freedoms of the First Amendment were read into the word "liberty" in the Fourteenth demand particular attention. So does the statutory and judicial advancement of the idea that government, especially the national government, is the first friend, rather than enemy, of civil liberty, and that the defense of our rights demands positive legislation positively enforced. This development must be particularly well pondered, for it is a leading issue of our times.

### PRESIDENT TRUMAN'S MESSAGE ON CIVIL RIGHTS

The message to Congress of February 2, 1948, seems destined to stand for some years to come as the most important modern document of American civil liberty. Mr. Truman's recommendations, which were variously greeted by bitter denunciation and wild applause, were based squarely on the 1947 Report of the President's Committee on Civil Rights. The ten proposals for specific legislation form a blueprint of action for those who demand that the national government give positive aid to the protection and expansion of civil rights.

## CIVIL LIBERTIES

To the Congress of the United States:

In the State of the Union Message on January 7, 1948, I spoke of five great goals toward which we should strive in our constant effort to strengthen our democracy and improve the welfare of our people. The first of these is to secure fully our essential human rights. I am now presenting to the Congress my recommendations for legislation to carry us forward toward that goal.

This Nation was founded by men and women who sought these shores that they might enjoy greater freedom and greater opportunity than they had known before. The founders of the United States proclaimed to the world the American belief that all men are created equal, and that governments are instituted to secure the inalienable rights with which all men are endowed. In the Declaration of Independence and the Constitution of the United States, they eloquently expressed the aspirations of all mankind for equality and freedom.

These ideals inspired the peoples of other lands, and their practical fulfillment made the United States the hope of the oppressed everywhere. Throughout our history men and women of all colors and creeds, of all races and religions, have come to this country to escape tyranny and discrimination. Millions strong, they have helped build this democratic Nation and have constantly reinforced our devotion to the great ideals of liberty and equality. With those who preceded them, they have helped to fashion and strengthen our American faith—a faith that can be simply stated:

We believe that all men are created equal and that they have the right to equal justice under law.

We believe that all men have the right to freedom of thought and of expression and the right to worship as they please.

We believe that all men are entitled to equal opportunities for jobs, for homes, for good health, and for education.

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We believe that all men should have a voice in their Government and that Government should protect, not usurp, the rights of the people.

These are the basic civil rights which are the source and the support of our democracy.

Today, the American people enjoy more freedom and opportunity than ever before. Never in our history has there been better reason to hope for the complete realization of the ideals of liberty and equality.

We shall not, however, finally achieve the ideals for which this Nation was founded so long as any American suffers discrimination as a result of his race, or religion, or color, or the land of origin of his forefathers.

Unfortunately, there still are examples—flagrant examples—of discrimination which are utterly contrary to our ideals. Not all groups of our population are free from the fear of violence. Not all groups are free to live and work where they please or to improve their conditions of life by their own efforts. Not all groups enjoy the full privileges of citizenship and participation in the government under which they live.

We cannot be satisfied until all our people have equal opportunities for jobs, for homes, for education, for health, and for political expression, and until all our people have equal protection under the law.

One year ago I appointed a committee of 15 distinguished Americans and asked them to appraise the condition of our civil rights and to recommend appropriate action by Federal, State, and local governments.

The committee's appraisal has resulted in a frank and revealing report. This report emphasizes that our basic human freedoms are better cared for and more vigilantly defended than ever before. But it also makes clear that there is a serious gap between our ideals and some of our practices. This gap must be closed.

This will take the strong efforts of each of us individu-



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ally, and all of us acting together through voluntary organizations and our governments.

The protection of civil rights begins with the mutual respect for the rights of others which all of us should practice in our daily lives. Through organizations in every community—in all parts of the country—we must continue to develop practical, workable arrangements for achieving greater tolerance and brotherhood.

The protection of civil rights is the duty of every government which derives its powers from the consent of the people. This is usually true of local, State, and national governments. There is much that the States can and should do at this time to extend their protection of civil rights. Wherever the law enforcement measures of State and local governments are inadequate to discharge this primary function of government, these measures should be strengthened and improved.

The Federal Government has a clear duty to see that constitutional guaranties of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union. That duty is shared by all three branches of the Government, but it can be fulfilled only if the Congress enacts modern, comprehensive civil rights laws, adequate to the needs of the day, and demonstrating our continuing faith in the free way of life.

I recommend, therefore, that the Congress enact legislation at this session directed toward the following specific objectives:

1. Establishing a permanent Commission on Civil Rights, a Joint Congressional Committee on Civil Rights, and a Civil Rights Division in the Department of Justice.
2. Strengthening existing civil-rights statutes.
3. Providing Federal protection against lynching.
4. Protecting more adequately the right to vote.
5. Establishing a Fair Employment Practice Commission to prevent unfair discrimination in employment.

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6. Prohibiting discrimination in interstate transportation facilities.

7. Providing home rule and suffrage in Presidential elections for the residents of the District of Columbia.

8. Providing statehood for Hawaii and Alaska and a greater measure of self-government for our island possessions.

9. Equalizing the opportunities for residents of the United States to become naturalized citizens.

10. Settling the evacuation claims of Japanese-Americans.

## STRENGTHENING THE GOVERNMENT ORGANIZATION

As a first step, we must strengthen the organization of the Federal Government in order to enforce civil-rights legislation more adequately and to watch over the state of our traditional liberties.

I recommend that the Congress establish a permanent Commission on Civil Rights reporting to the President. The Commission should continuously review our civil-rights policies and practices, study specific problems, and make recommendations to the President at frequent intervals. It should work with other agencies of the Federal Government, with State and local governments, and with private organizations.

I also suggest that the Congress establish a Joint Congressional Committee on Civil Rights. This committee should make a continuing study of legislative matters relating to civil rights and should consider means of improving respect for and enforcement of those rights.

These two bodies together should keep all of us continuously aware of the condition of civil rights in the United States and keep us alert to opportunities to improve their protection.

To provide for better enforcement of Federal civil rights laws there will be established a Division of Civil Rights

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in the Department of Justice. I recommend that the Congress provide for an additional Assistant Attorney General to supervise this Division.

### STRENGTHENING EXISTING CIVIL-RIGHTS STATUTES

I recommend that the Congress amend and strengthen the existing provisions of Federal law which safeguard the right to vote and the right to safety and security of person and property. These provisions are the basis for our present civil-rights enforcement program.

Section 51 of title 18 of the United States Code, which now gives protection to citizens in the enjoyment of rights secured by the Constitution or Federal laws, needs to be strengthened in two respects. In its present form this section protects persons only if they are citizens, and it affords protection only against conspiracies by two or more persons. This protection should be extended to all inhabitants of the United States, whether or not they are citizens, and should be afforded against infringement by persons acting individually as well as in conspiracy.

Section 52 of title 18 of the United States Code, which now gives general protection to individuals against the deprivation of federally secured rights by public officers, has proved to be inadequate in some cases because of the generality of its language. An enumeration of the principal rights protected under this section is needed to make more definite and certain the protection which the section affords.

### FEDERAL PROTECTION AGAINST LYNCHING

A specific Federal measure is needed to deal with the crime of lynching—against which I cannot speak too strongly. It is a principle of our democracy, written into our Constitution, that every person accused of an offense against the law shall have a fair, orderly trial in an impartial court. We have made great progress toward this end,

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but I regret to say that lynching has not yet finally disappeared from our land. So long as one person walks in fear of lynching, we shall not have achieved equal justice under law. I call upon the Congress to take decisive action against this crime.

### PROTECTING THE RIGHT TO VOTE

Under the Constitution, the right of all properly qualified citizens to vote is beyond question. Yet the exercise of this right is still subject to interference. Some individuals are prevented from voting by isolated acts of intimidation. Some whole groups are prevented by outmoded policies prevailing in certain States or communities.

We need stronger statutory protection of the right to vote. I urge the Congress to enact legislation forbidding interference by public officers or private persons with the right of qualified citizens to participate in primary, special, and general elections in which Federal officers are to be chosen. This legislation should extend to elections for State as well as Federal officers insofar as interference with the right to vote results from discriminatory action by public officers based on race, color, or other unreasonable classification.

Requirements for the payment of poll taxes also interfere with the right to vote. There are still seven States which, by their constitutions, place this barrier between their citizens and the ballot box. The American people would welcome voluntary action on the part of these States to remove this barrier. Nevertheless, I believe the Congress should enact measures insuring that the right to vote in elections for Federal officers shall not be contingent upon the payment of taxes.

I wish to make it clear that the enactment of the measures I have recommended will in no sense result in Federal conduct of elections. They are designed to give qualified citizens Federal protection of their right to vote. The

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actual conduct of elections, as always, will remain the responsibility of State governments.

### FAIR EMPLOYMENT PRACTICE COMMISSION

We in the United States believe that all men are entitled to equality of opportunity. Racial, religious, and other invidious forms of discrimination deprive the individual of an equal chance to develop and utilize his talents and to enjoy the rewards of his efforts.

Once more I repeat my request that the Congress enact fair employment practice legislation prohibiting discrimination in employment based on race, color, religion, or national origin. The legislation should create a Fair Employment Practice Commission with authority to prevent discrimination by employers and labor unions, trade and profession associations, and Government agencies and employment bureaus. The degree of effectiveness which the wartime Fair Employment Practice Committee attained shows that it is possible to equalize job opportunity by Government action and thus to eliminate the influence of prejudice in employment.

### INTERSTATE TRANSPORTATION

The channels of interstate commerce should be open to all Americans on a basis of complete equality. The Supreme Court has recently declared unconstitutional State laws requiring segregation on public carriers in interstate travel. Company regulations must not be allowed to replace unconstitutional State laws. I urge the Congress to prohibit discrimination and segregation, in the use of interstate transportation facilities, by both public officers and the employees of private companies.

### THE DISTRICT OF COLUMBIA

I am in full accord with the principle of local self-government for residents of the District of Columbia. In addition, I believe that the Constitution should be amended

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to extend suffrage in Presidential elections to the residents of the District.

The District of Columbia should be a true symbol of American freedom and democracy for our own people, and for the people of the world. It is my earnest hope that the Congress will promptly give the citizens of the District of Columbia their own local, elective government. They themselves can then deal with the inequalities arising from segregation in the schools and other public facilities, and from racial barriers to places of public accommodation which now exist for one-third of the District's population.

The present inequalities in essential services are primarily a problem for the District itself, but they are also of great concern to the whole Nation. Failing local corrective action in the near future, the Congress should enact a model civil-rights law for the Nation's Capital.

## OUR TERRITORIES AND POSSESSIONS

The present political status of our Territories and possessions impairs the enjoyment of civil rights by their residents. I have in the past recommended legislation granting statehood to Alaska and Hawaii, and organic acts for Guam and American Samoa, including a grant of citizenship to the people of these Pacific islands. I repeat these recommendations.

Furthermore, the residents of the Virgin Islands should be granted an increasing measure of self-government, and the people of Puerto Rico should be allowed to choose their form of government and their ultimate status with respect to the United States.

## EQUALITY IN NATURALIZATION

All properly qualified legal residents of the United States should be allowed to become citizens without regard to race, color, religion, or national origin. The Congress has recently removed the bars which formerly prevented

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persons from China, India, and the Philippines from becoming naturalized citizens. I urge the Congress to remove the remaining racial or nationality barriers which stand in the way of citizenship for some residents of our country.

### EVACUATION CLAIMS OF THE JAPANESE-AMERICANS

During the last war more than 100,000 Japanese-Americans were evacuated from their homes in the Pacific States solely because of their racial origin. Many of these people suffered property and business losses as a result of this forced evacuation and through no fault of their own. The Congress has before it legislation establishing a procedure by which claims based upon these losses can be promptly considered and settled. I trust that favorable action on this legislation will soon be taken.

The legislation I have recommended for enactment by the Congress at the present session is a minimum program if the Federal Government is to fulfill its obligation of insuring the constitutional guaranties of individual liberties and of equal protection under the law.

Under the authority of existing law, the Executive branch is taking every possible action to improve the enforcement of the civil rights statutes and to eliminate discrimination in Federal employment, in providing Federal services and facilities, and in the armed forces.

I have already referred to the establishment of the Civil Rights Division of the Department of Justice. The Federal Bureau of Investigation will work closely with this new Division in the investigation of Federal civil rights cases. Specialized training is being given to the Bureau's agents so that they may render more effective service in this difficult field of law enforcement.

It is the settled policy of the United States Government that there shall be no discrimination in Federal employment or in providing Federal services and facilities. Steady

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progress has been made toward this objective in recent years. I shall shortly issue an executive order containing a comprehensive restatement of the Federal nondiscrimination policy, together with appropriate measures to insure compliance.

During the recent war and in the years since its close we have made much progress toward equality of opportunity in our armed services without regard to race, color, religion, or national origin. I have instructed the Secretary of Defense to take steps to have the remaining instances of discrimination in the armed services eliminated as rapidly as possible. The personnel policies and practices of all the services in this regard will be made consistent.

I have instructed the Secretary of the Army to investigate the status of civil rights in the Panama Canal Zone with a view to eliminating such discrimination as may exist there. If legislation is necessary, I shall make appropriate recommendations to the Congress.

The position of the United States in the world today makes it especially urgent that we adopt these measures to secure for all our people their essential rights.

The peoples of the world are faced with the choice of freedom or enslavement, a choice between a form of government which harnesses the state in the service of the individual and a form of government which chains the individual to the needs of the state.

We in the United States are working in company with other nations who share our desire for enduring world peace and who believe with us that, above all else, men must be free. We are striving to build a world family of nations—a world where men may live under governments of their own choosing and under laws of their own making.

As part of that endeavor, the Commission on Human Rights of the United Nations is now engaged in preparing an international bill of human rights by which the nations of the world may bind themselves by international cove-



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nant to give effect to basic human rights and fundamental freedoms. We have played a leading role in this undertaking designed to create a world order of law and justice fully protective of the rights and the dignity of the individual.

To be effective in these efforts, we must protect our civil rights so that by providing all our people with the maximum enjoyment of personal freedom and personal opportunity we shall be a stronger nation—stronger in our leadership, stronger in our moral position, stronger in the deeper satisfactions of a united citizenry.

We know that our democracy is not perfect. But we do know that it offers a fuller, freer, happier life to our people than any totalitarian nation has ever offered.

If we wish to inspire the peoples of the world whose freedom is in jeopardy, if we wish to restore hope to those who have already lost their civil liberties, if we wish to fulfill the promise that is ours, we must correct the remaining imperfections in our practice of democracy.

We know the way. We need only the will.

HARRY S. TRUMAN

## CIVIL RIGHTS LEGISLATION

The contents of Civil Rights, Chapter 13 of Title 18 of the United States Code, are included in this document. Sections 241 and 242 are the slightly revised versions of sections 51 and 52, mentioned by President Truman in his Civil Rights Message. (Title 18 was revised in 1948.) They stem from a law of 1870. A few other provisions on civil rights are to be found sprinkled through the Code.

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SEC. 241. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or

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on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

SEC. 242. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

SEC. 243. No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than \$5,000.

SEC. 244. Whoever, being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, or Possession of the United States, causes any person wearing the uniform of the Army, Navy, Coast Guard, or Marine Corps of the United States to be discriminated against because of that uniform, shall be fined not more than \$500.

## ALIEN REGISTRATION ACT

Although the Constitution states bluntly that “Congress shall make no law . . . abridging the freedom of speech or of the press,” Congress has passed several laws designed to prevent the use of the freedom of expression by enemies of constitutional

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government. This act of 1940, the first peacetime sedition law since 1798, is an example of the limits that a democratic society, in the interest of self-preservation, will occasionally place on the exercise of basic liberties. A major test of this statute was initiated in July, 1948, when leaders of the American Communist Party were indicted under its sweeping provisions. The Attorney General will probably have to prove that the words and actions of these men constitute a "clear and present danger" to the government of the United States before the Supreme Court will declare for punishment.

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### TITLE I

SEC. 1. (a) It shall be unlawful for any person, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States—

(1) to advise, counsel, urge, or in any manner cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States.

(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, as defined in section 1 of the National Defense Act of June 3, 1916, as amended (48 Stat. 153; U.S.C., title 10, sec. 2), the Navy, Marine Corps, Coast Guard, Naval Reserve, and Marine Corps Reserve of the United States: and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

SEC. 2. (a) It shall be unlawful for any person—

(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United

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States by force or violence, or by the assassination of any officer of any such government;

(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

(b) For the purposes of this section, the term "government in the United States" means the Government of the United States, the government of any State, Territory, or possession of the United States, the government of the District of Columbia, or the government of any political subdivision of any of them.

SEC. 3. It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of this title.

SEC. 4. Any written or printed matter of the character described in section 1 or section 2 of this Act, which is intended for use in violation of this Act, may be taken from any house or other place in which it may be found, or from any person in whose possession it may be, under a search warrant issued pursuant to the provisions of title XI of the Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917 (40 Stat. 228; U.S.C., title 18, ch. 18).

SEC. 5. (a) Any person who violates any of the pro-

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visions of this title shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

(b) No person convicted of violating any of the provisions of this title shall, during the five years next following his conviction, be eligible for employment by the United States, or by any department or agency thereof (including any corporation the stock of which is wholly owned by the United States).

### EXECUTIVE ORDER AUTHORIZING WARTIME EVACUATION OF JAPANESE-AMERICAN CITIZENS

Clear-cut evidence of the rise of authority and decline of liberty in time of war is furnished by Executive Order 9066. On this deceptively simple presidential order of February 19, 1942, was based the wartime evacuation from the Pacific coast of 70,000 *citizens* and 40,000 aliens of Japanese descent. This wholesale abridgment of American liberty was adopted by the administration, approved by Congress, and suffered by the Supreme Court as a "military necessity."

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WHEREAS The successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U.S.C., Title 50, Sec. 104):

Now, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and

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of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services. . . .

FRANKLIN D. ROOSEVELT

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## THE POLITICAL PROCESS

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THE Constitution takes no notice of political parties. It organizes a government, assigns functions and powers to each of its branches, sets limits to the exercise of authority, and makes general provisions for the election or selection of personnel. To the people is left the responsibility for setting the government in motion and keeping it running; the Constitution gives no hint how this can best be done. "Can these bones live?" They can and do; the flesh and sinews with which the people have made them live are the political parties.

The parties are an inevitable, necessary, and salutary feature of our democratic political society. They are inevitable because under the conditions of popular government people of like mind and political purpose will band together naturally to elect candidates who share their point of view. The members of a legislature who profess a common political faith will just as naturally unite for action. Since most public questions generate earnest disagreement, parties arise inevitably wherever disagreement is permitted. This was the lesson of the 1790's. Parties are necessary because they provide the only means by which the political functions of the democratic process can be carried through successfully. In selecting and nominating candidates for office, formulating policies for the consideration of the electorate, bidding for support at elections, conducting governmental affairs if successful, and criticizing and restraining if in the minority, the political parties perform essential functions that would otherwise be performed haphazardly or not at all.

## THE POLITICAL PROCESS

There is a popular notion that parties are the cause of all our political woes. This is as misguided a notion as the one about money being the root of all evil. It is the misuse of the party (as it is the love of money) that leads to corruption. When operated with reasonable efficiency and democracy, as they often are and could be all the time, the parties are valuable instruments of democratic government. Not only do they form the link between government and people, but they educate the electorate on public issues and by stimulating interest bring more voters to the polls. Moreover, they help bridge the two main gaps of the American governmental system, that between national and state governments, and that between executive and legislative branches at all levels. Finally, they bring together people of diverse origin, culture, religion, and economic interest in a common undertaking.

This is particularly true in the United States, where the two-party system has been for more than a century a part of the political pattern. There is no question that the Republican and Democratic parties, in the process of trying to be all things to all voters, have fostered an increased measure of national and social unity. Their motives in catering to minority groups have not always been pure and enlightened, but these groups have been made to feel accepted and have prospered all the same. The two-party system arose in this country for a variety of reasons on which no two historians will exactly agree, and has continued to thrive on tradition and the single-member electoral constituency. Another of its advantages is the relative ease with which the opinion of the majority is determined and acted upon in elections and assemblies, in contrast to the sad experiences of several multipartied countries. Our third parties, too, have served their useful purpose, for they have launched many excellent reforms that the major parties were forced to adopt and carry through. Yet most Americans agree that the two-party system is and should be here to stay.

The chief aim of a political party is to gain control of the government by electing its candidates. Elections are thus not only the glue that holds the party together, but the primary instrument of popular control of government. The election of national officials receives some attention in the Constitution, but



## THE POLITICAL PROCESS

it is plain from a reading of the electoral provisions that this subject is to be left largely in the hands of the states. This, then, is a vital characteristic both of elections and of parties: they are regulated almost entirely by state law, the former by constitutional design, the latter by constitutional default. National laws exercise some control; for example, Congress has passed laws fixing a nation-wide date for national elections and instituting the secret ballot. The two most important congressional statutes regulating the political process are printed below. Other national laws may be in the offing, especially since Congress may now [since *Smith v. Allwright* (1944)] consider primaries as elections within the meaning of Article I, section 4, paragraph 1. Nevertheless, state laws will continue to regulate most of these matters. Each of the major parties will remain a loosely organized confederacy of forty-eight closely organized political associations.

The political process reaches its zenith in the nomination and election of the President of the United States. This is the one election in which all voters join, and only between June and November of every fourth year does the Republican or Democratic party have a truly national character. We are becoming ever more critical of the convention system of nomination and the electoral college system of election, and amendments to the Constitution have been proposed to make each of these processes more democratic and effective. A nation-wide presidential primary for each party would replace the convention system, and direct election of the President the present half-constitutional, half-customary method.

## FEDERAL CORRUPT PRACTICES ACT

Both the national and state governments have attempted to legislate corruption out of politics, with varying degrees of success. This act of 1925, the basic federal law on the subject, has not had the success that its sponsors predicted for it. It is not the law itself but the administration thereof that needs strengthening.

## THE POLITICAL PROCESS

SEC. 302. When used in this title—

(a) The term “election” includes a general or special election . . . but does not include a primary election or convention of a political party;

(b) The term “candidate” means an individual whose name is presented at an election for election as Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, whether or not such individual is elected;

(c) The term “political committee” includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential and vice presidential electors (1) in two or more States, or (2) whether or not in more than one State if such committee, association, or organization (other than a duly organized State or local committee of a political party) is a branch or subsidiary of a national committee, association, or organization;

(d) The term “contribution” includes a gift, subscription, loan, advance, or deposit of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution;

(e) The term “expenditure” includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure;

(f) The term “person” includes an individual, partnership, committee, association, corporation, and any other organization or group of persons;

(g) The term “Clerk” means the Clerk of the House of Representatives of the United States;

(h) The term “Secretary” means the Secretary of the Senate of the United States;

## THE POLITICAL PROCESS

(i) The term "State" includes Territory and possession of the United States.

SEC. 303. (a) Every political committee shall have a chairman and a treasurer. No contribution shall be accepted, and no expenditure made, by or on behalf of a political committee for the purpose of influencing an election, until such chairman and treasurer have been chosen.

(b) It shall be the duty of the treasurer of a political committee to keep a detailed and exact account of—

(1) All contributions made to or for such committee;

(2) The name and address of every person making any such contribution, and the date thereof;

(3) All expenditures made by or on behalf of such committee; and

(4) The name and address of every person to whom any such expenditure is made, and the date thereof.

(c) It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure by or on behalf of a political committee exceeding \$10 in amount. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for a period of at least 2 years from the date of the filing of the statement containing such items.

SEC. 304. Every person who receives a contribution for a political committee shall, on demand of the treasurer, and in any event within 5 days after the receipt of such contribution, render to the treasurer a detailed account thereof, including the name and address of the person making such contribution, and the date on which received.

SEC. 305. (a) The treasurer of a political committee shall file with the Clerk between the 1st and 10th days of March, June, and September, in each year, and also between the 10th and 15th days, and on the 5th day, next preceding the date on which a general election is to be held, at which candidates are to be elected in two or more States, and also on the 1st day of January, a statement containing,

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complete as of the day next preceding the date of filing—

(1) The name and address of each person who has made a contribution to or for such committee in one or more items of the aggregate amount or value, within the calendar year, of \$100 or more, together with the amount and date of such contribution;

(2) The total sum of the contributions made to or for such committee during the calendar year and not stated under paragraph (1);

(3) The total sum of all contributions made to or for such committee during the calendar year;

(4) The name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such committee, and the amount, date, and purpose of such expenditure;

(5) The total sum of all expenditures made by or on behalf of such committee during the calendar year and not stated under paragraph (4);

(6) The total sum of expenditures made by or on behalf of such committee during the calendar year.

(b) The statements required to be filed by subdivision (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

(c) The statement filed on the 1st day of January shall cover the preceding calendar year.

SEC. 306. Every person (other than a political committee) who makes an expenditure in one or more items, other than by contribution to a political committee, aggregating \$50 or more within a calendar year for the purpose of influencing in two or more States the election of candidates, shall file with the Clerk an itemized detailed statement of such expenditure in the same manner as required of the treasurer of a political committee by section 305.

## THE POLITICAL PROCESS

SEC. 307. (a) Every candidate for Senator shall file with the Secretary and every candidate for Representative, Delegate, or Resident Commissioner shall file with the Clerk not less than ten nor more than fifteen days before, and also within thirty days after, the date on which an election is to be held, a statement containing, complete as of the day next preceding the date of filing—

(1) A correct and itemized account of each contribution received by him or by any person for him with his knowledge or consent, from any source, in aid or support of his candidacy for election, or for the purpose of influencing the result of the election, together with the name of the person who has made such contribution;

(2) A correct and itemized account of each expenditure made by him or by any person for him with his knowledge or consent, in aid or support of his candidacy for election, or for the purpose of influencing the result of the election, together with the name of the person to whom such expenditure was made; except that only the total sum of expenditures for items specified in subdivision (c) of section 309 need be stated;

(3) A statement of every promise or pledge made by him or by any person for him with his consent, prior to the closing of the polls on the day of the election relative to the appointment or recommendation for appointment of any person to any public or private position or employment for the purpose of procuring support in his candidacy, and the name, address, and occupation of every person to whom any such promise or pledge has been made, together with the description of any such position. If no such promise or pledge has been made, that fact shall be specifically stated. . . .

(c) Every candidate shall enclose with his first statement a report, based upon the records of the proper State official, stating the total number of votes cast for all candidates for the office which the candidate seeks at the

## THE POLITICAL PROCESS

general election next preceding the election at which he is a candidate.

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SEC. 309 (a) A candidate, in his campaign for election, shall not make expenditures in excess of the amount which he may lawfully make under the laws of the State in which he is a candidate, nor in excess of the amount which he may lawfully make under the provisions of this title.

(b) Unless the laws of his State prescribe a less amount as the maximum limit of campaign expenditures, a candidate may make expenditures up to—

(1) The sum of \$10,000 if a candidate for Senator, or the sum of \$2,500 if a candidate for Representative, Delegate, or Resident Commissioner; or

(2) An amount equal to the amount obtained by multiplying three cents by the total number of votes cast at the last general election for all candidates for the office which the candidate seeks, but in no event exceeding \$25,000 if a candidate for Senator or \$5,000 if a candidate for Representative, Delegate, or Resident Commissioner.

(c) Money expended by a candidate to meet and discharge any assessment, fee, or charge made or levied upon candidates by the laws of the State in which he resides, or expended for his necessary personal, traveling, or subsistence expenses, or for stationery, postage, writing, or printing (other than for use on billboards or in newspapers), for distributing letters, circulars, or posters, or for telegraph or telephone service, shall not be included in determining whether his expenditures have exceeded the sum fixed by paragraph (1) or (2) of subdivision (b) as the limit of campaign expenses of a candidate.

SEC. 310. It is unlawful for any candidate to directly or indirectly promise or pledge the appointment, or the use of his influence or support for the appointment, of

## THE POLITICAL PROCESS

any person to any public or private position or employment for the purpose of procuring support in his candidacy.

SEC. 311. It is unlawful for any person to make or offer to make an expenditure, or to cause an expenditure to be made or offered, to any person, either to vote or withhold his vote, or to vote for or against any candidate, and it is unlawful for any person to solicit, accept, or receive any such expenditure in consideration of his vote or the withholding of his vote.

SEC. 312. Section 118 of the act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909, is amended to read as follows:

"SEC. 118. It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or any officer or employee of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person."

SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for,

## THE POLITICAL PROCESS

or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.<sup>1</sup>

SEC. 314. (a) Any person who violates any of the foregoing provisions of this title, except those for which a specific penalty is imposed by sections 312 and 313, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) Any person who willfully violates any of the foregoing provisions of this title, except those for which a specific penalty is imposed by sections 312 and 313, shall be fined not more than \$10,000 and imprisoned not more than two years.

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SEC. 316. This title shall not be construed to annul the laws of any State relating to the nomination or election of candidates, unless directly inconsistent with the provisions of this title, or to exempt any candidate from complying with such State laws. . . .

<sup>1</sup>As amended by the Labor Management Relations Act of 1947.



## THE POLITICAL PROCESS

### HATCH POLITICAL ACTIVITIES ACTS

The well-known Hatch Acts of 1939 and 1940 were designed to strengthen and expand the Corrupt Practices Act, as well as to remedy electoral abuses involving improper persuasion of relief workers. These laws, too, have disappointed their supporters. For example, the \$3,000,000 limit set by section 20 has served merely to direct the flow of campaign funds into channels other than the national committees; state, local, and independent organizations picked up most of the checks in the 1948 elections. Sections 2, 12, 13, 20, and the bracketed words in section 9(a) are the 1940 amendments to the act of 1939.

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SEC. 1. It shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any election held solely or in part for the purpose of selecting a President, a Vice President, a Presidential elector, or any Member of the Senate or any Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

SEC. 2. It shall be unlawful for (1) any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), or (2) any person employed in any administrative position by any State, by any political subdivision or municipality of any State, or by any agency of any State or any of its political subdivisions or municipalities (including any corporation

## THE POLITICAL PROCESS

controlled by any State or by any such political subdivision, municipality, or agency and any corporation all of the capital stock of which is owned by any State or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or by any such department, independent agency, or other agency of the United States, to use his official authority for the purpose of interfering with, or affecting, the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate or Resident Commissioner, from any Territory or insular possession.

SEC. 3. It shall be unlawful for any person, directly or indirectly, to promise any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any Act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election.

SEC. 4. Except as may be required by the provisions of subsection (b), section 9 of this Act, it shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes on account of race, creed, color, or any political activity, support of, or opposition to, any candidate or any political party in any election.

SEC. 5. It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, em-

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ployment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes.

SEC. 6. It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment, or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

SEC. 7. No part of any appropriation made by any Act, heretofore or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public-works projects, shall be used for the purpose of, and no authority conferred by any such Act upon any person shall be exercised or administered for the purpose of, interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election.

SEC. 8. Any person who violates any of the foregoing provisions of this Act upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

SEC. 9 (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote

## THE POLITICAL PROCESS

as they may choose and to express their opinions on all political subjects [and candidates]. For the purposes of this section the term "officer" or "employee" shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

.....

SEC. 12. (a) No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency shall (1) use his official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof, or (2) directly or indirectly coerce, attempt to coerce, command, or advise any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes. No such officer or employee shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of the second sentence

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of this subsection, the term "officer or employee" shall not be construed to include (1) the Governor or the Lieutenant Governor of any State or any person who is authorized by law to act as Governor, or the mayor of any city; (2) duly elected heads of executive departments of any State or municipality who are not classified under a State or municipal merit or civil-service system; (3) officers holding elective offices.

.....

SEC. 13. (a) It is hereby declared to be a pernicious political activity, and it shall hereafter be unlawful, for any person, directly or indirectly, to make contributions in an aggregate amount in excess of \$5,000, during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective Federal office (including the offices of President of the United States and Presidential and Vice Presidential electors), or to or on behalf of any committee or other organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office or the success of any national political party. This subsection shall not apply to contributions made to or by a State or local committee or other State or local organization.

.....

(d) Any person who engages in a pernicious political activity in violation of any provision of this section, shall upon conviction thereof be fined not more than \$5,000 or imprisoned for not more than five years. In all cases of violations of this section by a partnership, committee, association, corporation, or other organization or group of persons, the officers, directors, or managing heads thereof who knowingly and willfully participate in such violation, shall be subject to punishment as herein provided.

(e) Nothing in this section shall be construed to per-

## THE POLITICAL PROCESS

mit the making of any contribution which is prohibited by any provision of law in force on the date this section takes effect. Nothing in this Act shall be construed to alter or amend any provisions of the Federal Corrupt Practices Act of 1925, or any amendments thereto.

.....

SEC. 20. No political committee shall receive contributions aggregating more than \$3,000,000, or make expenditures aggregating more than \$3,000,000, during any calendar year. For the purposes of this section, any contributions received and any expenditures made on behalf of any political committee with the knowledge and consent of the chairman or treasurer of such committee shall be deemed to be received or made by such committee. Any violation of this section by any political committee shall be deemed also to be a violation of this section by the chairman and the treasurer of such committee and by any other person responsible for such violation. Terms used in this section shall have the meaning assigned to them in section 302 of the Federal Corrupt Practices Act, 1925, and the penalties provided in such Act shall apply to violations of this section. . . .

## RULES OF THE REPUBLICAN NATIONAL CONVENTION

The importance of unwritten customs and political arrangements in the American system of government is most strikingly demonstrated by the quadrennial national nominating conventions, which have been part of the political process since the days of Andrew Jackson. The conventions are not entirely unregulated by statute. Mention of them will be found in the Corrupt Practices and Hatch Acts, and state laws regulate the method of electing delegates. For the most part, however, the conventions carry on their vital functions according to their own rules. The passages printed here are taken from the rules and order of business adopted by the Republican National Convention held at Philadelphia, June 21-25, 1948.

THE POLITICAL PROCESS  
MEMBERSHIP IN THE NATIONAL CONVENTION  
RULE NO. 1

*Delegates at Large*

1. Four Delegates at Large from each State.
2. Two additional Delegates at Large for each Representative at Large in Congress from each State.
3. Three Delegates at Large for Alaska, six Delegates at Large each for District of Columbia and Hawaii, and two additional Delegates if the Delegate to Congress elected at the last preceding election was the Republican nominee. Three Delegates at Large for Puerto Rico and one for the Virgin Islands.
4. Six additional Delegates at Large from each State casting its electoral vote, or a majority thereof, for the Republican nominee for President in the last preceding presidential election. If any State fails to cast its electoral vote or a majority thereof for the Republican nominee for President in the last preceding election and thereafter at the next succeeding election elects a Republican United States Senator or Governor, or in the event there is no election of a United States Senator, at such next succeeding election, if at the last election at which a United States Senator or Governor was elected, a Republican United States Senator or Governor was elected, then in such event such State shall be entitled to such additional Delegates at Large.

*District Delegates*

1. One District Delegate from each Congressional District casting one thousand (1,000) votes or more for any Republican elector in the last preceding Presidential election or for the Republican nominee for Congress in the last preceding Congressional election.
2. One additional District Delegate from each Congressional District casting ten thousand (10,000) votes or

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more for any Republican elector in the last preceding Presidential election or for the Republican nominee for Congress in the last preceding Congressional election.

### *Alternate Delegates*

One Alternate Delegate to each Delegate to the National Convention.

#### RULE NO. 2

Delegates shall be elected under the following rules:

(a) Only legal and qualified voters shall participate in a Republican primary, caucus, mass meeting, or mass convention, held for the purpose of selecting delegates to a County, District, or State Convention, and only such legal and qualified voters shall be elected as delegates to County, District, and State Conventions.

(b) District Conventions shall be composed of Delegates who are legal and qualified voters therein, and Delegates to State Conventions shall also be qualified voters of the respective districts which they represent in said State Conventions. Such Delegates shall be apportioned among the counties, parishes, and cities of the State or District having regard to the Republican vote therein.

(c) Delegates and Alternates at Large to the National Convention shall be duly qualified voters of their respective States, Territories, and Territorial Possessions, and in the case of the District of Columbia, shall be residents therein.

(d) Delegates and Alternates to the National Convention, representing Congressional Districts, shall be residents and qualified voters in said districts respectively.

(e) Delegates at Large and their Alternates to the National Convention and Delegates from Congressional Districts and their Alternates, shall be elected in the following manner:

(1) By primary election, in accordance with the laws



## THE POLITICAL PROCESS

of the State in which the election occurs, in such States as require by law the election of Delegates to National Conventions of political parties by direct primary; *Provided*, That in any State in which Republican representation upon the Board of Judges or Inspectors of Elections for such primary election is denied by law, Delegates and Alternates shall be elected as hereinafter provided.

(2) By Congressional or State Conventions, as the case may be, to be called by the Congressional or State Committees, respectively. Notice of the Call for any such Convention shall be published in a newspaper or newspapers of general circulation in the District or State, as the case may be, not less than fifteen (15) days prior to the date of said Convention; *Provided, however*, That in selecting Delegates and Alternates to the National Convention, no State law shall be observed which hinders, abridges or denies to any citizen of the United States, eligible under the Constitution of the United States, to the office of President or Vice President, the right or privilege of being a candidate under such State law for the nomination for President or Vice President; or which authorizes the election of a number of Delegates or Alternates from any State to the National Convention different from that fixed in these Rules.

(3) By the Republican State Committee or Governing Committee in any State in which the law of such State specifically authorizes the election of Delegates in such manner.

(f) In a Congressional District where there is no Republican Congressional Committee, the Republican State Committee shall issue the Call and make said publication.

(g) All Delegates from any State may, however, be chosen from the State at Large, in the event that the laws of the State in which the election occurs, so provide.

(h) Alternate Delegates shall be elected to said Na-

## THE POLITICAL PROCESS

tional Convention for each unit of representation equal in number to the number of Delegates elected therein and shall be chosen in the same manner and at the same time the Delegates are chosen; *Provided, however*, That if the law of any State shall prescribe the method of choosing Alternates they shall be chosen in accordance with the provisions of the law of the State in which the election occurs.

(i) The election of Delegates and Alternates from Alaska, Hawaii, Puerto Rico, Virgin Islands, and the District of Columbia shall be held under the direction of the respective recognized Republican Governing Committee therein in conformity with the Rules of the Republican National Committee.

(j) Election of Delegates shall be certified in every case where they are elected by Conventions, by the Chairman and Secretary of such Conventions respectively and in case of election by primary, they shall be certified to by the proper official, and all certificates shall be forwarded by said duly elected Delegates and Alternates in the manner herein provided.

(k) All Delegates or Alternates shall be elected not later than thirty (30) days before the date of the meeting of said National Convention, unless otherwise provided by the laws of the State in which the election occurs. No Delegates or Alternates shall be deemed eligible to participate in any Convention to elect Delegates to the said National Convention, who were elected prior to the date of the issuance of the Call for such National Convention.

### RULE NO. 3

No State, Territory, Territorial Possession, or the District of Columbia shall elect a greater number of persons to act as Delegates and Alternates than the actual number of Delegates and Alternates respectively to which they are entitled under the Call, and no unit of representation may

## THE POLITICAL PROCESS

elect any Delegate or Delegates, or their Alternates, with permission to cast a fractional vote.

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### PROCEEDINGS IN THE CONVENTION

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#### RULE NO. 6

Each Delegate in the Convention shall be entitled to one (1) vote, which may be cast by his Alternate in the absence of the Delegate.

#### RULE NO. 7

The Rules of the House of Representatives of the United States shall be the Rules of this Convention, so far as they are applicable and not inconsistent with the Rules herein set forth.

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#### RULE NO. 11

Upon all subjects before the Convention the States shall be called in alphabetical order, and next, Alaska, the District of Columbia, Hawaii, Puerto Rico, and the Virgin Islands.

#### RULE NO. 12

The report of the Committee on Credentials shall be disposed of before the report of the Committee on Resolutions is acted upon, and the report of the Committee on Resolutions shall be disposed of before the Convention proceeds to the nomination of candidates for President and Vice President.

#### RULE NO. 13

When a majority of the Delegates of any six (6) States severally shall demand that a vote be recorded, the same shall be taken by States, Territories, Territorial Possessions, and the District of Columbia in the order hereinbefore established.

## THE POLITICAL PROCESS

### RULE NO. 14

In making the nominations for President and Vice President in no case shall the Call of the Roll be dispensed with. No nominating speech for any candidate for President or Vice President shall exceed fifteen (15) minutes in length; nor shall there be more than four (4) seconding speeches for any candidate for President or Vice President; and each of said seconding speeches shall not exceed five (5) minutes in length.

### RULE NO. 15

When it appears, at the close of the Roll Call, that any candidate for the nomination for President or Vice President has received the majority of the votes entitled to be cast in the Convention, the Chairman of the Convention shall announce the question to be:

“Shall the nomination of the candidate be made unanimous?” If no candidate shall have received such majority the Chairman shall direct the vote to be taken again and shall repeat the taking of the vote until some candidate shall have received a majority of votes.

### RULE NO. 16

In the balloting, the vote of each State, Territory, Territorial Possession, and the District of Columbia shall be announced by the Chairman of the respective Delegations; and in case the vote of any State, Territory, Territorial Possession, or the District of Columbia shall be divided, the Chairman shall announce the number of votes for each candidate, or for or against any proposition; but if exception is taken by any Delegate to the correctness of such announcement by the Chairman of his Delegation, the Chairman of the Convention shall direct the roll of members of such Delegation to be called and the result shall be recorded in accordance with the vote of the several Delegates in such Delegation. . . .

## THE POLITICAL PROCESS

### PROPOSED AMENDMENT FOR DIRECT ELECTION OF THE PRESIDENT

Amendments providing for the direct election of President and Vice-President have been brought forward repeatedly. Andrew Jackson made such a proposal in each of his eight annual messages to Congress. The resolution printed here (House Joint Resolution 9, 80th Congress, 1st Session) has the support of prominent members of Congress and could conceivably be enacted by the necessary two-thirds majorities. Many reformers want to go the whole way and have the President elected by a simple majority vote, with the entire nation as a single electoral constituency. They will be lucky to get this amendment, which abolishes the useless electoral college and the unfortunate unit rule, but leaves each state the unit of election.

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*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That an amendment is hereby proposed to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by three-fourths of the legislatures of the several States. Said amendment shall be as follows:*

#### “ARTICLE —

“SEC. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as herein provided.

“The Electoral College system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The electors in each State shall have the qualifications requisite for electors of

## THE POLITICAL PROCESS

the most numerous branch of the State legislature. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.

“Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President. In making the computations, fractional numbers less than one one-thousandth shall be disregarded unless a more detailed calculation would change the result of the election. The person having the greatest number of electoral votes for President shall be President. If two or more persons shall have an equal and the highest number of such votes, then the one for whom the greatest number of popular votes were cast shall be President.

“The Vice President shall be likewise elected, at the same time and in the same manner and subject to the same provisions, as the President, but no person constitu-

## THE POLITICAL PROCESS

tionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

“SEC. 2. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution and the twelfth article of amendment to the Constitution, are hereby repealed.

“SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of the submission hereof to the States by the Congress.”

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## THE PRESIDENT

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AT the head of the government stands the President. Although the framers of the Constitution believed that Congress would inevitably be the dominant, if not domineering, element in the constitutional structure, history has proved them wrong. A primary characteristic of American constitutional development has been the interrupted but irreversible growth of presidential power and prestige. Two factors in particular have spurred this growth: the vigorous incumbencies of such Presidents as Washington, Jackson, Lincoln, Cleveland, Wilson, and the two Roosevelts, and the increasing frequency and intensity of our periods of national emergency. It is a maxim of political science that emergencies tend to magnify executive authority, generally at the expense of the legislative branch. Whatever the framers may have intended and however much Congress may protest, the Presidency is today the focus of American government.

The Presidency is an unusual executive institution. For one thing, it unites the duties of two men in one office. In most countries two officials share the executive burden—the King or President or Governor-General, who is the ceremonial chief of state, and the Prime Minister, who is the working head of the government. In the United States the President is the working head and the figurehead as well. Although this adds to his duties, it also adds to his prestige. The framers may not have realized what they were doing, but they took a momentous step when they fused the dignity of a king and power of a prime minister in one elective office.



## THE PRESIDENT

Next, the President is, for a constitutional democracy, a uniquely independent executive both in the manner of his election and in the nature of his responsibility. A decisive feature of the American constitutional system is the deceptively simple fact that the President has his source of election *outside* the legislature. In addition, he holds his office for four years, and only death, voluntary resignation, and the cumbersome method of impeachment can arrest his tenure. Congress and, to a lesser degree, the courts have ways of checking the President, but in general his only responsibility is to the political process and the judgment of history.

Third, the President is unquestionably the most powerful elective official in the world today. Indeed, his constitutional, statutory, and customary duties are almost too much for one man to handle. Besides his time-consuming obligations as chief of state, the modern President has at least seven other major roles: (1) executive head of the administrative branch, with the constitutional duty to "take care that the laws be faithfully executed"; (2) commander-in-chief of the armed forces, at home and abroad, in peace and war; (3) sole director of foreign relations and leading formulator of foreign policy; (4) protector of the peace of the United States, whether it is broken by war, rebellion, riot, financial panic, industrial warfare, or natural disaster; (5) leader of Congress in much of its law-making activity and critical examiner of every bill and joint resolution; (6) chieftain of one of the major parties; and (7) sole spokesman for the American people, in Woodrow Wilson's words, "the only national voice in affairs." There, in a few words, are the ingredients of presidential ascendancy. "We elect a king for four years," said Secretary of State Seward, "and give him absolute power within certain limits, which after all he can interpret for himself."

The President obviously requires considerable assistance. An important adjunct of our first office is the administrative staff, numbering several hundred persons, that has been developed to assist the President directly in the discharge of his constitutional and statutory duties. Among the officials and offices acting for him as eyes, ears, arms, mouth, and even brain, are the Cabinet (with the nine heads of departments as its continuing

## THE PRESIDENT

members), the presidential secretaries, the six administrative assistants authorized in the Reorganization Act of 1939, a full array of armed forces aides, the White House Office, the invaluable Bureau of the Budget, the National Security Council, the Liaison Office for Personnel Management, and the three-man Council of Economic Advisers. Every President also keeps a group of informal advisers in or near the White House for assistance in writing speeches, advice, tennis, golf, or poker. Despite the effective aid the President's administrative staff provides, much remains to be done in freeing him of onerous and trivial obligations. Several proposals have been made to revive the moribund Vice-Presidency by transferring to it most of the President's duties of an administrative nature.

The documents printed in this chapter illustrate only a few aspects of the Presidency. Throughout the entire book there will be found other materials concerning this office, particularly in the chapters that deal with civil liberties, the relations of President and Congress, foreign relations, national defense, public finance, business, and labor.

### PROCLAMATION OF A BANK HOLIDAY

The President announces the use of his constitutional and statutory powers principally through proclamations and executive orders. These are printed for all the world to read in the Federal Register. This proclamation, issued by Franklin D. Roosevelt, March 6, 1933, at the peak of the banking crisis of that year, is an outstanding example of presidential initiative in a moment of severe national emergency.

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WHEREAS there have been heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding; and

WHEREAS continuous and increasingly extensive speculative activity abroad in foreign exchange has resulted in severe drains on the Nation's stocks of gold; and

WHEREAS these conditions have created a national emergency; and

## THE PRESIDENT

WHEREAS it is in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange and permitting the application of appropriate measures to protect the interests of our people; and

WHEREAS it is provided in Section 5 (b) of the Act of October 6, 1917 (40 Stat. L. 411), as amended, "That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency \* \* \* "; and

WHEREAS it is provided in section 16 of the said Act "that whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than ten years, or both \* \* \* ";

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, in view of such national emergency and by virtue of the authority vested in me by said Act and in order to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency, do hereby proclaim, order, direct and declare that from Monday, the Sixth day of March, to Thursday, the Ninth day of March, Nineteen Hundred and Thirty-three, both dates inclusive, there shall be maintained and observed by all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions, a bank holiday, and that during said period all banking transactions shall be suspended. During such holiday, excepting as herein-

## THE PRESIDENT

after provided, no such banking institution or branch shall pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever, of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof; nor shall any such banking institution or branch pay out deposits, make loans or discounts, deal in foreign exchange, transfer credits from the United States to any place abroad, or transact any other banking business whatsoever.

During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (b) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, and (c) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve Banks or invested in obligations of the United States.

As used in this order the term "banking institutions" shall include all Federal Reserve Banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or persons, engaged in the business of receiving deposits, making loans, discounting business paper, or transacting any other form of banking business. . . .

## PROCLAMATION OF A NATIONAL EMERGENCY

There are several hundred laws on the books today that take effect only in the event of a national emergency. These constitute a major source of presidential power, especially since

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the proclamation of such an emergency is by law and custom a presidential prerogative. The emergency proclaimed in this document began May 27, 1941, and was still in force November 1, 1948.

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WHEREAS on September 8, 1939 because of the outbreak of war in Europe a proclamation was issued declaring a limited national emergency and directing measures "for the purpose of strengthening our national defense within the limits of peacetime authorizations,"

WHEREAS a succession of events makes plain that the objectives of the Axis belligerents in such war are not confined to those avowed at its commencement, but include overthrow throughout the world of existing democratic order, and a worldwide domination of peoples and economies through the destruction of all resistance on land and sea and in the air, AND

WHEREAS indifference on the part of the United States to the increasing menace would be perilous, and common prudence requires that for the security of this Nation and of this hemisphere we should pass from peacetime authorizations of military strength to such a basis as will enable us to cope instantly and decisively with any attempt at hostile encirclement of this hemisphere, or the establishment of any base for aggression against it, as well as to repel the threat of predatory incursion by foreign agents into our territory and society,

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do proclaim that an unlimited national emergency confronts this country, which requires that its military, naval, air and civilian defenses be put on the basis of readiness to repel any and all acts or threats of aggression directed toward any part of the Western Hemisphere.

I call upon all the loyal citizens engaged in production

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for defense to give precedence to the needs of the Nation to the end that a system of government that makes private enterprise possible may survive.

I call upon all our loyal workmen as well as employers to merge their lesser differences in the larger effort to insure the survival of the only kind of government which recognizes the rights of labor or of capital.

I call upon loyal State and local leaders and officials to cooperate with the civilian defense agencies of the United States to assure our internal security against foreign directed subversion and to put every community in order for maximum productive effort and minimum of waste and unnecessary frictions.

I call upon all loyal citizens to place the Nation's needs first in mind and in action to the end that we may mobilize and have ready for instant defensive use all of the physical powers, all of the moral strength, and all of the material resources of this Nation.

### "HE SHALL TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED"

The President's first duty is to see to the execution of the laws. Here, taken at random from the hundreds of statutory obligations placed upon him by Congress, are three examples of this presidential function. The first is a typical emergency law, the second the basic authority permitting him to *enforce* the laws, the last an absurd instance (of which Congress should not be proud) of the many trivial duties he has been obligated to perform. Other statutes calling for presidential attention are to be found throughout the book.

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#### Emergency Banking Act, 1933

SEC. 4. In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress

## THE PRESIDENT

through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense. . . .

## Revised Statute 5298

Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

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### Joint Resolution Designating Mother's Day, 1914

WHEREAS the service rendered the United States by the American mother is the greatest source of the country's strength and inspiration; and

WHEREAS we honor ourselves and the mothers of America when we do anything to give emphasis to the home as the fountain head of the State; and

WHEREAS the American mother is doing so much for the home, the moral uplift and religion, hence so much for good government and humanity: Therefore be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and requested to issue a proclamation calling upon the Government officials to display the United States flag on all Government buildings, and the people of the United States to display the flag at their homes or other suitable places, on the second Sunday in May, as a public expression of our love and reverence for the mothers of our country.*

SEC. 2. That the second Sunday in May shall hereafter be designated and known as Mother's Day, and it shall be the duty of the President to request its observance as provided for in this resolution.

### EXECUTIVE ORDER ESTABLISHING THE EXECUTIVE OFFICE OF THE PRESIDENT

The Executive Office of the President, the core of his administrative staff, was created by Executive Order 8248, published in the Federal Register September 12, 1939. This document constitutes one of the longest strides toward efficient, modern administration ever taken in the United States. Particular attention should be devoted to section II, 1 (c), in which the duties of the President's six administrative assistants (authorized by the Reorganization Act of 1939) are outlined. These are the men upon whom the President devolves the detailed execution of most of his tremendous responsibilities. The Na-



## THE PRESIDENT

tional Resources Planning Board was abolished by statute in 1943. A recent addition to the Executive Office is described on pages 309–311.

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By virtue of the authority vested in me by the Constitution and the statutes, and in order to effectuate the purposes of the Reorganization Act of 1939, Public [Law] No. 19, Seventy-sixth Congress, approved April 3, 1939, and of Reorganization Plans Nos. I and II submitted to the Congress by the President and made effective as of July 1, 1939, by Public Resolution No. 2, Seventy-sixth Congress, approved June 7, 1939, by organizing the Executive Office of the President with functions and duties so prescribed and responsibilities so fixed that the President will have adequate machinery for the administrative management of the Executive Branch of the Government, it is hereby ordered as follows:

### I

There shall be within the Executive Office of the President the following principal divisions, namely: (1) the White House Office, (2) the Bureau of the Budget, (3) the National Resources Planning Board, (4) the Liaison Office for Personnel Management, (5) the Office of Government Reports, and (6) in the event of a national emergency, or threat of a national emergency, such office for emergency management as the President shall determine.

### II

The functions and duties of the divisions of the Executive Office of the President are hereby defined as follows:

1. *The White House Office.*

In general, to serve the President in an intimate capacity in the performance of the many detailed activities incident to his immediate office. To that end, the White

## THE PRESIDENT

House Office shall be composed of the following principal subdivisions, with particular functions and duties as indicated:

(a) **THE SECRETARIES TO THE PRESIDENT.** To facilitate and maintain quick and easy communication with the Congress, the individual members of the Congress, the heads of executive departments and agencies, the press, the radio, and the general public.

(b) **THE EXECUTIVE CLERK.** To provide for the orderly handling of documents and correspondence within the White House Office, and to organize and supervise all clerical services and procedure relating thereto.

(c) **THE ADMINISTRATIVE ASSISTANTS TO THE PRESIDENT.** To assist the President in such matters as he may direct, and at the specific request of the President, to get information and to condense and summarize it for his use. These Administrative Assistants shall be personal aides to the President and shall have no authority over anyone in any department or agency, including the Executive Office of the President, other than the personnel assigned to their immediate office. In no event shall the Administrative Assistants be interposed between the President and the head of any department or agency or between the President and any one of the divisions in the Executive Office of the President.

### *2. The Bureau of the Budget.*

(a) To assist the President in the preparation of the Budget and the formulation of the fiscal program of the Government.

(b) To supervise and control the administration of the Budget.

(c) To conduct research in the development of improved plans of administrative management, and to advise the executive departments and agencies of the Government with respect to improved administrative organization and practice.

## THE PRESIDENT

(d) To aid the President to bring about more efficient and economical conduct of Government service.

(e) To assist the President by clearing and coordinating departmental advice on proposed legislation and by making recommendations as to Presidential action on legislative enactments, in accordance with past practice.

(f) To assist in the consideration and clearance and, where necessary, in the preparation of proposed Executive orders and proclamations, in accordance with the provisions of Executive Order No. 7298 of February 18, 1936.

(g) To plan and promote the improvement, development, and coordination of Federal and other statistical services.

(h) To keep the President informed of the progress of activities by agencies of the Government with respect to work proposed, work actually initiated, and work completed, together with the relative timing of work between the several agencies of the Government; all to the end that the work programs of the several agencies of the Executive Branch of the Government may be coordinated and that the monies appropriated by the Congress may be expended in the most economical manner possible with the least possible overlapping and duplication of effort.

.....

### 4. *The Liaison Office for Personnel Management.*

In accordance with the statement of purpose made in the Message to Congress of April 25, 1939, accompanying Reorganization Plan No. I, one of the Administrative Assistants to the President, authorized in the Reorganization Act of 1939, shall be designated by the President as Liaison Officer for Personnel Management and shall be in charge of the Liaison Office for Personnel Management. The functions of this office shall be:

(a) To assist the President in the better execution of

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the duties imposed upon him by the provisions of the Constitution and the laws with respect to personnel management, especially the Civil Service Act of 1883, as amended, and the rules promulgated by the President under authority of that Act.

(b) To assist the President in maintaining closer contact with all agencies dealing with personnel matters insofar as they affect or tend to determine the personnel management policies of the Executive Branch of the Government.

### 5. *The Office of Government Reports.*<sup>1</sup>

(a) To provide a central clearing house through which individual citizens, organizations of citizens, State or local governmental bodies, and, where appropriate, agencies of the Federal Government, may transmit inquiries and complaints and receive advice and information.

(b) To assist the President in dealing with special problems requiring the clearance of information between the Federal Government and State and local governments and private institutions.

(c) To collect and distribute information concerning the purposes and activities of executive departments and agencies for the use of the Congress, administrative officials, and the public.

(d) To keep the President currently informed of the opinions, desires, and complaints of citizens and groups of citizens and of State and local governments with respect to the work of Federal agencies.

(e) To report to the President on the basis of the information it has obtained possible ways and means for reducing the cost of the operation of the Government.

## III

The Bureau of the Budget, the National Resources Planning Board, and the Liaison Office for Personnel Management shall constitute the three principal management

<sup>1</sup> As of June 30, 1948, the OGR has been temporarily discontinued.

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arms of the Government for the (1) preparation and administration of the Budget and improvement of administrative management and organization, (2) planning for conservation and utilization of the resources of the Nation, and (3) coordination of the administration of personnel, none of which belongs in any department but which are necessary for the over-all management of the Executive Branch of the Government, so that the President will be enabled the better to carry out his Constitutional duties of informing the Congress with respect to the state of the Union, of recommending appropriate and expedient measures, and of seeing that the laws are faithfully executed.

### IV

To facilitate the orderly transaction of business within each of the five divisions herein defined and to clarify the relations of these divisions with each other and with the President, I direct that the Bureau of the Budget, the National Resources Planning Board, the Liaison Office for Personnel Management, and the Office of Government Reports shall respectively prepare regulations for the governance of their internal organizations and procedures. Such regulations shall be in effect when approved by the President, and shall remain in force until changed by new regulations approved by him. The President will prescribe regulations governing the conduct of the business of the division of the White House Office.

### V

The Director of the Bureau of the Budget shall prepare a consolidated budget for the Executive Office of the President for submission by the President to the Congress. Annually, pursuant to the regular request issued by the Bureau of the Budget, each division of the Executive Office of the President shall prepare and submit to the Bureau estimates of proposed appropriations for the suc-

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ceeding fiscal year. The form of the estimates and the manner of their consideration for incorporation in the budget shall be the same as prescribed for other executive departments and agencies.

The Bureau of the Budget shall likewise perform with respect to the several divisions of the Executive Office of the President such functions and duties relating to supplemental estimates, apportionments, and budget administration as are exercised by it for other agencies of the Federal Government.

.....  
FRANKLIN D. ROOSEVELT

## PRESIDENTIAL SUCCESSION ACT

Under the terms of the Constitution, Congress "may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President." The present arrangement for the succession to the Presidency was asked of a Democratic Congress by President Truman in 1945 and given him by a Republican Congress in 1947. Before the passage of this law the Secretary of State had been first in line.

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(a) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this subsection.

(b) If, at the time when under subsection (a) a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro

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tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.

(c) An individual acting as President under subsection (a) or subsection (b) shall continue to act until the expiration of the then current Presidential term, except that—

(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

(d) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b), then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense,<sup>1</sup> Attorney General, Postmaster General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor.

(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(3) The taking of the oath of office by an individual specified in the list in paragraph (1) shall be held to con-

<sup>1</sup> As amended by the National Security Act of 1947.

## THE PRESIDENT

stitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

(e) Subsections (a), (b), and (d) shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

(f) During the period that any individual acts as President under this Act, his compensation shall be at the rate then provided by law in the case of the President.

(g) Sections 1 and 2 of the Act entitled "An Act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice President," approved January 19, 1886 (24 Stat. 1; U. S. C., 1940 edition, title 3, secs. 21 and 22), are repealed.

## TWO-TERM AMENDMENT

This controversial proposal has been before the state legislatures (not the people) since March, 1947. Twenty-one states have assented as of November 1, 1948. If this amendment is ratified, it will mark the first time in our history that a constitutional custom has been written into the fundamental law. Its proponents say that this would not have been necessary, had not the custom been broken. Its opponents regard it as an undisguised insult to Franklin D. Roosevelt and a restriction on the free judgment of the people that we may one day regret.

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*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That The fol-*



## THE PRESIDENT

lowing article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

### “ARTICLE —

“SEC. 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

“SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.”

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THE mark of a healthy constitutional democracy is a strong and vigilant legislative assembly. The government without President and courts would be (and was under the Articles of Confederation) disorderly and ineffectual; without Congress it would be a dictatorship. The national legislature remains, as the framers intended, the driving force of American government.

The constitutional purposes of the legislative branch are to represent the people of the United States in deliberative assembly and to determine, in conjunction with the President, the policies by which they shall be governed. In the discharge of these high purposes Congress performs three general functions. First, it *legislates*. Although it is becoming increasingly difficult for legislatures to work out the detailed statutes demanded by the complex circumstances of a modern society, Congress remains primarily a lawmaking body. Second, Congress *controls*, that is, it exercises oversight and restraint upon the activities of the administration and constantly calls to account the officials charged with the execution of the laws, from the President on down. Third, Congress *educates and informs*. The people are told what the government is doing, the government is told what the people are thinking. The relative importance of each of these functions varies from one Congress to the next, and each could be performed with more dispatch and consequence. Although Congress is a more important lawmaking body than the British House of Commons, the latter is a more useful instrument of control and education. Finally,

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the Senate is charged by the Constitution with two executive functions: It must give its "advice and consent" to presidential appointments and treaties, in the latter instance by a two-thirds majority. By reason of these extra duties and a smaller, more wieldy membership, the Senate has long been the more effective and respected of the two Houses.

In executing each of these functions Congress relies heavily on the committee system. No matter how detailed the legislative proposals of President, administration, or members of Congress, they are rarely spared painstaking study and reworking in the committee to which they are referred. No cabinet member ever appears before Congress to engage in debate with the members, but all, at some time in their career, appear before a congressional committee and answer some rather embarrassing questions. And who will say that he has not been thoroughly educated, in one way or another, by the activities of the various investigating committees during the past few years? It has been truly said that ninety per cent of the work of Congress is carried on in the committees of House and Senate.

The rise of the Presidency, which was noted in the introduction to Chapter 6, has inevitably been matched by a decline of Congress. It is easy for the legislators to lay this reversal of constitutional intentions at the door of the strong Presidents and the strong circumstances of recent years, but Congress, too, has done its part. Congress created the huge administration with its often ill-defined powers and blurred lines of responsibility; Congress gave the President the bulk of his authority; Congress stocked his emergency arsenal with laws that have no time limit; and it still permits him to declare the existence of national emergencies.

It may be that Congress could not have done otherwise, nor can do much to reverse a constitutional trend that is apparently irreversible. Yet the legislative branch has the power, if only it will exercise it, to regain a large part of its former authority and repute. This will entail a thorough alteration in its organization and methods of business. Petty privileges and vested interests must be surrendered by individuals for the good of the entire institution, and a responsible leadership must be created

## CONGRESS

and permitted to function. Congress must undertake several tasks of self-improvement before it can reassume the prime position claimed for it by some of its more vociferous members. It must simplify the rules of congressional procedure, break the obstinate power of the House Rules Committee, do away with the senseless filibuster without destroying the fundamental worth of the Senate debates, abolish the seniority rule for the selection of committee chairmen, abolish the private bill by the adoption of a rigorous rule of self-denial, establish complete and unqualified home rule for the District of Columbia, and institute an electric system of voting in Congress.

This discussion has been critical in nature and perhaps has overstated the case for legislative reform. It should not leave an impression that Congress is a feeble, disorganized institution. Even in its present condition our national legislature is an invaluable instrument of democratic government. In contrast with the legislative assemblies in most other countries, it retains its basic functions in its own hands and performs them reasonably well. Yet much can be done. It is for Congress to decide how important Congress is going to be.

### LEGISLATIVE REORGANIZATION ACT

Although the purposes of this statute of 1946 have by no means been fully realized, it does represent the first concerted attempt at congressional self-improvement in many years. Not all the excellent suggestions of the La Follette-Monroney Committee on the Organization of Congress were embodied in this law, nor, for that matter, did the Committee even presume to recommend major changes in the method of selecting committee chairmen, in the power of the House Rules Committee, or in the rule for limitation of debate in the Senate. In short, the act is only a beginning. The most important feature was the realignment of the committees and the reduction of their number. The provisions of this law not printed here authorized professional staffs for the committees and a legislative reference service, raised the compensation of members of Congress, and inaugurated a pension plan for their retirement.

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### TITLE I—CHANGES IN RULES OF SENATE AND HOUSE

#### RULE-MAKING POWER OF THE SENATE AND HOUSE

SEC. 101. The following sections of this title are enacted by the Congress:

(a) As an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply; and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(b) With full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

#### PART 1—STANDING RULES OF THE SENATE

##### STANDING COMMITTEES OF THE SENATE

SEC. 102. Rule XXV of the Standing Rules of the Senate is amended to read as follows:

#### “RULE XXV

##### “STANDING COMMITTEES

“(1) The following standing committees shall be appointed at the commencement of each Congress, with leave to report by bill or otherwise:

“(a) Committee on Agriculture and Forestry, to consist of thirteen Senators. . . .

“(b) Committee on Appropriations, to consist of twenty-one Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

“1. Appropriation of the revenue for the support of the Government.

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“(c) Committee on Armed Services, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

“1. Common defense generally.

“2. The War Department and the Military Establishment generally.

“3. The Navy Department and the Naval Establishment generally.

“4. Soldiers’ and sailors’ homes.

“5. Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

“6. Selective service.

“7. Size and composition of the Army and Navy.

“8. Forts, arsenals, military reservations, and navy yards.

“9. Ammunition depots.

“10. Maintenance and operation of the Panama Canal, including the administration, sanitation, and government of the Canal Zone.

“11. Conservation, development, and use of naval petroleum and oil shale reserves.

“12. Strategic and critical materials necessary for the common defense.

“(d) Committee on Banking and Currency, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

“1. Banking and currency generally.

“2. Financial aid to commerce and industry, other than matters relating to such aid which are specifically assigned to other committees under this rule.

“3. Deposit insurance.

“4. Public and private housing.

“5. Federal Reserve System.

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“6. Gold and silver, including the coinage thereof.

“7. Issuance of notes and redemption thereof.

“8. Valuation and revaluation of the dollar.

“9. Control of prices of commodities, rents, or services.

“(e) Committee on Civil Service, to consist of thirteen Senators. . . .

“(f) Committee on the District of Columbia, to consist of thirteen Senators. . . .

“(g) (1) Committee on Expenditures in the Executive Departments, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

“(A) Budget and accounting measures, other than appropriations.

“(B) Reorganizations in the executive branch of the Government.

“(2) Such committee shall have the duty of—

“(A) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

“(B) studying the operation of Government activities at all levels with a view to determining its economy and efficiency;

“(C) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;

“(D) studying intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member.

“(h) Committee on Finance, to consist of thirteen Senators, to which committee shall be referred all proposed

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legislation, messages, petitions, memorials, and other matters relating to the following subjects:

- "1. Revenue measures generally.
- "2. The bonded debt of the United States.
- "3. The deposit of public moneys.
- "4. Customs, collection districts, and ports of entry and delivery.
- "5. Reciprocal trade agreements.
- "6. Transportation of dutiable goods.
- "7. Revenue measures relating to the insular possessions.
- "8. Tariffs and import quotas, and matters related thereto.
- "9. National social security.
- "10. Veterans' measures generally.
- "11. Pensions of all the wars of the United States, general and special.
- "12. Life insurance issued by the Government on account of service in the armed forces.
- "13. Compensation of veterans.
- "(i) Committee on Foreign Relations, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
  - "1. Relations of the United States with foreign nations generally.
  - "2. Treaties.
  - "3. Establishment of boundary lines between the United States and foreign nations.
  - "4. Protection of American citizens abroad and expatriation.
  - "5. Neutrality.
  - "6. International conferences and congresses.
  - "7. The American National Red Cross.
  - "8. Intervention abroad and declarations of war.
  - "9. Measures relating to the diplomatic service.



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“10. Acquisition of land and buildings for embassies and legations in foreign countries.

“11. Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

“12. United Nations Organization and international financial and monetary organizations.

“13. Foreign loans.

“(j) Committee on Interstate and Foreign Commerce, to consist of thirteen Senators. . . .

“(k) Committee on the Judiciary, to consist of thirteen Senators. . . .

“(l) Committee on Labor and Public Welfare, to consist of thirteen Senators. . . .

“(m) Committee on Public Lands, to consist of thirteen Senators. . . .

“(n) The Committee on Public Works, to consist of thirteen Senators. . . .

“(o) (1) Committee on Rules and Administration, to consist of thirteen Senators. . . .

“(4) Each Senator shall serve on two standing committees and no more; except that Senators of the majority party who are members of the Committee on the District of Columbia or of the Committee on Expenditures in the Executive Departments may serve on three standing committees and no more.”

## PART 2—RULES OF THE HOUSE OF REPRESENTATIVES STANDING COMMITTEES OF THE HOUSE OF REPRESENTATIVES

SEC. 121. (a) Rule X of the Rules of the House of Representatives is amended to read as follows:

### “RULE X

#### “STANDING COMMITTEES

“(a) There shall be elected by the House, at the commencement of each Congress, the following standing committees:

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"1. Committee on Agriculture, to consist of twenty-seven Members.

"2. Committee on Appropriations, to consist of forty-three Members.

"3. Committee on Armed Services, to consist of thirty-three Members.

"4. Committee on Banking and Currency, to consist of twenty-seven Members.

"5. Committee on Post Office and Civil Service, to consist of twenty-five Members.

"6. Committee on the District of Columbia, to consist of twenty-five Members.

"7. Committee on Education and Labor, to consist of twenty-five Members.

"8. Committee on Expenditures in the Executive Departments, to consist of twenty-five Members.

"9. Committee on Foreign Affairs, to consist of twenty-five Members.

"10. Committee on House Administration, to consist of twenty-five Members.

"11. Committee on Interstate and Foreign Commerce, to consist of twenty-seven Members.

"12. Committee on the Judiciary, to consist of twenty-seven Members.

"13. Committee on Merchant Marine and Fisheries, to consist of twenty-five Members.

"14. Committee on Public Lands, to consist of twenty-five Members.

"15. Committee on Public Works, to consist of twenty-seven Members.

"16. Committee on Rules, to consist of twelve Members.

"17. Committee on Un-American Activities, to consist of nine Members.

"18. Committee on Veterans' Affairs, to consist of twenty-seven Members.

"19. Committee on Ways and Means, to consist of twenty-five Members.

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“(b) (1) The Speaker shall appoint all select and conference committees which shall be ordered by the House from time to time.

“(2) At the commencement of each Congress, the House shall elect as chairman of each standing committee one of the Members thereof; in the temporary absence of the chairman, the Member next in rank in the order named in the election of the committee, and so on, as often as the case shall happen, shall act as chairman; and in case of a permanent vacancy in the chairmanship of any such committee the House shall elect another chairman.

“(3) All vacancies in standing committees in the House shall be filled by election by the House. Each Member shall be elected to serve on one standing committee and no more; except that Members who are elected to serve on the Committee on the District of Columbia or on the Committee on Un-American Activities may be elected to serve on two standing committees and no more, and Members of the majority party who are elected to serve on the Committee on Expenditures in the Executive Departments or on the Committee on House Administration may be elected to serve on two standing committees and no more.”

(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

“RULE XI

“POWERS AND DUTIES OF COMMITTEES

“(1) All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively.

.....

“(p) Committee on Rules.

“1. The rules, joint rules, and order of business of the House.

“2. Recesses and final adjournments of Congress.

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“(q) (1) Committee on Un-American Activities.

“(A) Un-American activities.

“(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

“The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

“For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member. . . .

“(s) Committee on Ways and Means.

“1. Revenue measures generally.

“2. The bonded debt of the United States.

“3. The deposit of public moneys.

“4. Customs, collection districts, and ports of entry and delivery.

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- “5. Reciprocal trade agreements.
- “6. Transportation of dutiable goods.
- “7. Revenue measures relating to the insular possessions.
- “8. National social security. . . . ”

### PART 3—PROVISIONS APPLICABLE TO BOTH HOUSES

#### PRIVATE BILLS BANNED

SEC. 131. No private bill or resolution (including so-called omnibus claims or pension bills), and no amendment to any bill or resolution, authorizing or directing (1) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Federal Tort Claims Act, or for a pension (other than to carry out a provision of law or treaty stipulation); (2) the construction of a bridge across a navigable stream; or (3) the correction of a military or naval record, shall be received or considered in either the Senate or the House of Representatives.

#### CONGRESSIONAL ADJOURNMENT

SEC. 132. Except in time of war or during a national emergency proclaimed by the President, the two Houses shall adjourn sine die not later than the last day (Sundays excepted) in the month of July in each year unless otherwise provided by the Congress.

#### COMMITTEE PROCEDURE

SEC. 133. (a) Each standing committee of the Senate and the House of Representatives (except the Committees on Appropriations) shall fix regular weekly, biweekly, or monthly meeting days for the transaction of business before the committee, and additional meetings may be called by the chairman as he may deem necessary.

(b) Each such committee shall keep a complete record of all committee action. Such record shall include a record of the votes on any question on which a record vote is demanded.

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(c) It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the Senate or House of Representatives, as the case may be, any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote.

(d) No measure or recommendation shall be reported from any such committee unless a majority of the committee were actually present.

(e) Each such standing committee shall, so far as practicable, require all witnesses appearing before it to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument. The staff of each committee shall prepare digests of such statements for the use of committee members.

(f) All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session.

## COMMITTEE POWERS

SEC. 134. (a) Each standing committee of the Senate, including any subcommittee of any such committee, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to take such testimony and to make such expenditures (not in excess of \$10,000 for each committee during any Congress) as it deems advisable. Each such committee may make investigations into any matter within its jurisdiction, may report such hearings as may be had by it, and may employ stenographic assistance at a cost not exceeding 25 cents per hundred words. The expenses of the committee shall

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be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

(b) Every committee and subcommittee serving the Senate and House of Representatives shall report the name, profession and total salary of each staff member employed by it, and shall make an accounting of funds appropriated to it and expended by it to the Secretary of the Senate and Clerk of the House of Representatives, as the case may be, at least once every six months, and such information shall be published periodically in the Congressional Directory when and as the same is issued and as Senate and House documents, respectively, every three months.

(c) No standing committee of the Senate or the House, except the Committee on Rules of the House, shall sit, without special leave, while the Senate or the House, as the case may be, is in session.

### CONFERENCE RULES ON AMENDMENTS IN NATURE OF SUBSTITUTE

SEC. 135. (a) In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees, it shall be in order for the conferees to report a substitute on the same subject matter; but they may not include in the report matter not committed to them by either House. They may, however, include in their report in any such case matter which is a germane modification of subjects in disagreement.

(b) In any case in which the conferees violate subsection (a), the conference report shall be subject to a point of order.

### LEGISLATIVE OVERSIGHT BY STANDING COMMITTEES

SEC. 136. To assist the Congress in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each

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standing committee of the Senate and the House of Representatives shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the Congress by the agencies in the executive branch of the Government.

### DECISIONS ON QUESTIONS OF COMMITTEE JURISDICTION

SEC. 137. In any case in which a controversy arises as to the jurisdiction of any standing committee of the Senate with respect to any proposed legislation, the question of jurisdiction shall be decided by the presiding officer of the Senate, without debate, in favor of that committee which has jurisdiction over the subject matter which predominates in such proposed legislation; but such decision shall be subject to an appeal.

### LEGISLATIVE BUDGET

SEC. 138. (a) The Committee on Ways and Means and the Committee on Appropriations of the House of Representatives, and the Committee on Finance and the Committee on Appropriations of the Senate, or duly authorized subcommittees thereof, are authorized and directed to meet jointly at the beginning of each regular session of Congress and after study and consultation, giving due consideration to the budget recommendations of the President, report to their respective Houses a legislative budget for the ensuing fiscal year, including the estimated overall Federal receipts and expenditures for such year. Such report shall contain a recommendation for the maximum amount to be appropriated for expenditure in such year which shall include such an amount to be reserved for deficiencies as may be deemed necessary by such committees. If the estimated receipts exceed the estimated ex-



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penditures, such report shall contain a recommendation for a reduction in the public debt. Such report shall be made by February 15.

(b) The report shall be accompanied by a concurrent resolution adopting such budget, and fixing the maximum amount to be appropriated for expenditure in such year. If the estimated expenditures exceed the estimated receipts, the concurrent resolution shall include a section substantially as follows: "That it is the sense of the Congress that the public debt shall be increased in an amount equal to the amount by which the estimated expenditures for the ensuing fiscal year exceed the estimated receipts, such amount being \$ ."

.....

### STAGES OF A BILL OF THE HOUSE

This excerpt from the House Manual describes the complicated course that a bill must run before it becomes a law.

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#### 1. INTRODUCTION:

By a Member by laying the bill on the Clerk's table informally. A Member sometimes introduces a petition only, leaving to the committee the drawing of a bill, such a petition referred to a committee having jurisdiction of the subject giving authority to report a bill. Sometimes communications addressed to the House from the executive departments or from other sources are referred to committees by the Speaker and give authority for the committees to originate bills. Messages from the President also are referred by the Speaker or the House and give jurisdiction to the committees receiving them to originate bills.

#### 2. REFERENCE TO A STANDING OR SELECT COMMITTEE:

Public bills are referred under direction of the Speaker; private bills are indorsed with the names of the commit-

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tees to which they go under the rule by the Members introducing them. Senate bills are referred under direction of the Speaker. A bill is numbered and printed when referred.

### 3. REPORTED FROM THE COMMITTEE:

Committees having leave to report at any time make their reports from the floor; other committees make their reports by laying them on the Clerk's table informally. The bill and the report are printed when reported.

### 4. PLACED ON THE CALENDAR:

Occasionally a privileged bill is considered when reported; but usually it is placed with the unprivileged bills on the Calendar where it belongs under the rule by direction of the Speaker.

### 5. CONSIDERATION IN COMMITTEE OF THE WHOLE:

Public bills which do not raise revenue or make or authorize appropriations of money or property do not go through this stage. All other bills are considered in Committee of the Whole. The stages of consideration in Committee of the Whole are: General debate; reading for amendment under the five-minute rule; order to lay aside with a favorable recommendation, or to rise and report; reporting of to the House.

### 6. READING A SECOND TIME IN THE HOUSE:

Bills not requiring consideration in Committee of the Whole are read a second time in full, after which they are open to debate and amendment in any part. Bills considered in Committee of the Whole are read a second time in full in that committee and when reported out, with or without amendments, are not read in full again, but are subject to further debate or amendment in the House unless the previous question is ordered at once.

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### 7. ENGROSSMENT AND THIRD READING:

The question on House bills is taken on ordering the engrossment and third reading at one vote. If decided in the affirmative, the reading a third time usually takes place at once, by title. But any Member may demand the reading in full of the engrossed copy, in which case the bill is laid aside until it can be engrossed. Senate bills come to the House in engrossed form, and the question is put on third reading alone. When the question on engrossment and third reading of a House bill or third reading of a Senate bill is decided in the negative the bill is lost as much as if defeated on the final passage. The question on engrossment and third reading is not made from the floor, but is put by the Speaker as a matter of course.

### 8. PASSAGE:

The question on the passage of a bill is put by the Speaker as a matter of course, without awaiting a motion from the floor.

### 9. TRANSMISSION TO THE SENATE BY MESSAGE.

### 10. CONSIDERATION BY THE SENATE:

In the Senate House bills are usually referred to committees for consideration and report, after which they have their several readings, with opportunities for debate and amendment. The same procedure takes place in the House as to bills sent from the Senate.

### 11. RETURN OF, FROM THE SENATE WITHOUT AMENDMENTS:

If the Senate passes a House bill without amendment it returns it to the House, where it is at once enrolled on parchment for signature. A bill thus passed without amendment goes into possession of the clerk, and is not laid before the House prior to enrollment. If the Senate rejects a House bill the House is informed. Similar procedure occurs when the House passes a Senate bill without amendment.

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### 12. RETURN OF, FROM THE SENATE WITH AMENDMENTS:

House bills returned with Senate amendments go to the Speaker's table. If any Senate amendment requires consideration in Committee of the Whole the bill is referred by the Speaker informally to the standing committee having jurisdiction, and when that committee reports the bill with recommendations it is referred to Committee of the Whole House on the state of the Union, to be there considered and reported to the House itself. When no Senate amendment requires consideration in Committee of the Whole the bills come before the House directly from the Speaker's table.

### 13. CONSIDERATION OF SENATE AMENDMENTS BY THE HOUSE:

When a bill with Senate amendments comes before the House, the House takes up each amendment by itself and may vote to agree to it, agree to it with an amendment, or disagree to it. If it disagrees it may ask a conference with the Senate or may send notice of its disagreement, leaving it to the Senate to recede or insist and ask the conference.

### 14. SETTLEMENT OF DIFFERENCES BY CONFERENCE:

When disagreements are referred to conference, the managers embody their settlement in a report, which is acted on by each House as a whole. When this report is agreed to the bill is finally passed, and is at once enrolled for signature.

### 15. ENROLLMENT ON PARCHMENT:

The House in which a bill originates enrolls it.

### 16. EXAMINATION BY THE COMMITTEE ON ENROLLED BILLS:<sup>1</sup>

While the Committee on Enrolled Bills is described as a joint committee, each branch acts independently. The chairman of each branch affixes to the bills examined a certificate that the bill has been found truly enrolled.

<sup>1</sup> Now the Committee on House Administration.

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### 17. SIGNING BY THE SPEAKER AND PRESIDENT OF THE SENATE:

The enrolled bill is first laid before the House of Representatives and signed by the Speaker, whether it be a House or Senate bill, after which it is transmitted to the Senate and signed by the president of that body.

### 18. TRANSMITTAL TO THE PRESIDENT OF THE UNITED STATES:

The Chairman of the Committee on Enrolled Bills for each House carries the bills from his House to the President. In the House of Representatives a report of the bills taken to the President each day is made to the House and entered on its Journal.

### 19. APPROVAL BY THE PRESIDENT:

If the President approve he does so with his signature.

### 20. DISAPPROVAL BY THE PRESIDENT:

When the President disapproves a bill he returns it to the House in which it originated, with a message stating that he disapproves, and giving his reasons therefor.

### 21. ACTION ON, WHEN RETURNED DISAPPROVED:

The House to which a disapproved bill is returned has the message read and spread on its Journal. It may then consider at once the question of passing the bill notwithstanding the President's objections, or may postpone to a day certain, or refer to a committee for examination. The vote on passing the bill, notwithstanding the President's objections, must be carried by two-thirds. If the bill fails to pass in the House to which it is returned it remains there; but if it passes it is sent to the other House for action.

### 22. FILING WITH THE SECRETARY OF STATE:

When approved by the President a bill is deposited in the office of the Secretary of State; and when the two

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Houses have passed a bill, notwithstanding the President's objections, the presiding officer of the House which acts on it last transmits it to the Secretary of State.

### SENATE CLOSURE RULE

Adopted in 1917 at the insistence of President Wilson, who had been sorely tried by the successful filibuster of the "little group of willful men," the inadequate rule governing the limitation of debate in the Senate is rarely invoked. The Senator who votes to end a colleague's filibuster today may want to indulge in a little filibustering of his own tomorrow.

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## RULE XXII

### PRECEDENCE OF MOTIONS

. . . If at any time a motion, signed by sixteen Senators, to bring to a close the debate upon any pending measure is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by an aye-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by a two-thirds vote of those voting, then said measure shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the pending measure, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent,

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no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

### REGULATION OF LOBBYING ACT

Title III of the Legislative Reorganization Act of 1946 represents the first major effort by Congress to regulate the activities of the pressure groups that are an inevitable adjunct of the modern legislative process.

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#### PERSONS TO WHOM APPLICABLE

SEC. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

#### REGISTRATION WITH SECRETARY OF THE SENATE AND CLERK OF THE HOUSE

SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the

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Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the pro-



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visions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

.....

## PENALTIES

SEC. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

## EXEMPTION

SEC. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.

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## THE PRESIDENT AND CONGRESS

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THE key relationship of constitutional government is that between the executive and legislative branches. According to their method of ordering this relationship the modern democracies are divided into two principal types: the cabinet or parliamentary system, in which the executive and legislative branches are fused; and the presidential, in which they are separated. The government of England is the working model of the first type; most of the world's governments are more or less faithful copies. The government of the United States is the leading example of the presidential system.

To foreign observers one of the most unusual, and incomprehensible, aspects of the American government is the constitutional gulf between President and Congress. In England or Canada or France a major difference of opinion between executive and legislature cannot exist for long. One branch or the other must alter its policies or membership. In the United States discord can exist for years. That is why people like Harold Laski shake their heads over a Democratic President and Republican Congress, and shake them even harder over a Democratic President and Democratic Congress who disagree on some major policy. In their opinion we have overdone this business of the separation of powers; our government is all checks and no balances.

One answer we can make to this criticism is to point out that the men who wrote the Constitution planned it this way. They would have looked with suspicion on the modern English system, for their scheme of checks and balances was designed

## THE PRESIDENT AND CONGRESS

to prevent the legislative mill from grinding out too many ill-conceived laws in too great a hurry. We should also remember that the gulf between President and Congress is not always so wide as in 1947 and 1948. Cooperation can and does exist, even with the two branches in different political hands.

The degree of executive-legislative cooperation is a function of several variables: the political complexion of President and Congress, the state of the Union, the vigor and tact of the President's leadership, and the mood of Congress, which is generally cooperative at the beginning of a President's term and rebellious near the end. The chief responsibility for bridging the constitutional gulf rests with the President. For this reason it is imperative for a successful modern President to be a skillful political leader. The more effectively he can persuade and dominate his party, the more successfully he can lead Congress to the enactment of the party's program. Since Congress is not organized to lead itself, the refusal or inability of the President to show the way results in weak and disorganized government.

The President with a mind to lead Congress, whether in the enactment of a single bill or an entire program, has a sizable store of weapons with which to work. For one thing, the Constitution authorizes him to approve or veto all bills and resolutions, call special sessions of one or both Houses, and "give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." Moreover, Congress itself has recognized the need for external leadership. The Budget and Accounting Act of 1921 (see page 248) is an open bid for presidential guidance. Most important, the imaginative Presidents have developed several informal techniques for exerting pressure on Congress: the threat of a veto, delivered directly to Congress or indirectly to the press; the White House conference with leaders of House and Senate; the appeal to the people over the heads of a stiff-necked Congress, a technique that Andrew Jackson discovered and Franklin Roosevelt refined; and the scientific distribution of the loaves and fishes of federal patronage. Mr. Roosevelt demonstrated clearly in 1933 that there is

## THE PRESIDENT AND CONGRESS

nothing like a little carefully dangled patronage to bring a wobbling congressman back into line.

Congress is inevitably the unhappier of the two partners in the legislative process. If it refuses to follow the President's lead, it is labeled "obstructionist." If it goes along with his proposals, it is accused of being a "rubber stamp." Generally, Congress may be counted on to watch out for its own interests; there are ways of dealing with Presidents whose leadership is too vigorous or tactless, or whose policies are simply disliked. The most effective congressional weapon is the power of the purse. Congress can also pass laws that restrict the President's authority (if not over his veto, then inserted as riders in appropriations bills) or refuse to pass laws that the President wants. It can request of him, and require of all others, regular reports and occasional information. Its committees investigate all phases of executive activity, and each House maintains a Committee on Expenditures in the Executive Departments. On rare instances one of the Houses has shown its displeasure with a President by passing a resolution of censure. As a last resort the House can still do what a House did in 1868: impeach an obstinate President for "high crimes and misdemeanors." Some day "two-thirds of the Senators present" may agree.

The materials in this chapter illuminate many phases of the delicate relationship between President and Congress. The first group tells of happy days, the second and third of hard times; the last presents two of the many proposals for the improvement of executive-legislative cooperation.

## FRANKLIN D. ROOSEVELT AND THE SEVENTY-THIRD CONGRESS

The first sitting of the New Deal Congress, called into special session March 9 and adjourned June 15, 1933, was marked by an unusual degree of executive-legislative harmony. The need for legislative action was pressing, the leadership of the President forceful, and the cooperation of Congress unstinting. It was during this extraordinary session that the "fireside chat" became a national institution. Three documents illustrate some of the high points of the session.

## THE PRESIDENT AND CONGRESS

### Call for a Special Session

With this proclamation of March 5, President Roosevelt called the new Congress into an immediate emergency session. There have been twenty-seven special sessions in the nation's history.

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WHEREAS public interests require that the Congress of the United States should be convened in extra session at twelve o'clock, noon, on the Ninth day of March, 1933, to receive such communication as may be made by the Executive;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene in extra session at the Capitol in the City of Washington on the Ninth day of March, 1933, at twelve o'clock, noon, of which all persons who shall at that time be entitled to act as members thereof are hereby required to take notice.

.....

#### Message to Congress Recommending Legislative Action

This communication, typical of the many sent by the President during the "Hundred Days," was accompanied by the draft of a detailed bill. Mr. Roosevelt said to Congress in another of his messages, "I am not speaking to you in general terms. I am pointing out a definite road." A section of this bill, enacted into law the day it was introduced, may be found on page 111.

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#### *To the Senate and House of Representatives:*

On March 3 banking operations in the United States ceased. To review at this time the causes of this failure of our banking system is unnecessary. Suffice it to say that

## THE PRESIDENT AND CONGRESS

the Government has been compelled to step in for the protection of depositors and the business of the Nation.

Our first task is to reopen all sound banks. This is an essential preliminary to subsequent legislation directed against speculation with the funds of depositors and other violations of positions of trust.

In order that the first objective—the opening of banks for the resumption of business—may be accomplished, I ask of the Congress the immediate enactment of legislation giving to the Executive branch of the Government control over banks for the protection of depositors; authority forthwith to open such banks as have already been ascertained to be in sound condition and other such banks as rapidly as possible; and authority to reorganize and reopen such banks as may be found to require reorganization to put them on a sound basis.

I ask amendments to the Federal Reserve Act to provide for such additional currency, adequately secured, as it may become necessary to issue to meet all demands for currency and at the same time to achieve this end without increasing the unsecured indebtedness of the Government of the United States.

I cannot too strongly urge upon the Congress the clear necessity for immediate action. A continuation of the strangulation of banking facilities is unthinkable. The passage of the proposed legislation will end this condition and I trust within a short space of time will result in a resumption of business activities.

In addition, it is my belief that this legislation will not only lift immediately all unwarranted doubts and suspicions in regard to banks which are one hundred percent sound but will also mark the beginning of a new relationship between the banks and the people of this country.

The members of the new Congress will realize, I am confident, the grave responsibility which lies upon me and upon them.

## THE PRESIDENT AND CONGRESS

In the short space of five days it is impossible for us to formulate completed measures to prevent the recurrence of the evils of the past. This does not and should not, however, justify any delay in accomplishing this first step.

At an early moment I shall request of the Congress two other measures which I regard as of immediate urgency. With action taken thereon we can proceed to the consideration of a rounded program of national restoration.

### Letter of Appreciation to Congress

Identical copies of this message were sent to the Speaker of the House and the President of the Senate June 16, 1933. Letters to individual congressmen are favorite presidential weapons in the leadership of the legislature, especially when they are given the proper attention by the nation's press.

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Dear Mr. Speaker:

Before the adjournment of the Special Session I want to convey to you and to the members of the House of Representatives an expression of my thanks for making possible, on the broad average, a more sincere and wholehearted cooperation between the legislative and the executive branches of the United States Government than has been witnessed by the American people in many a long year.

This spirit of teamwork has in most cases transcended party lines. It has taken cognizance of a crisis in the affairs of our Nation and of the world. It has grasped the need for a new approach to problems both new and old. It has proven that our form of government can rise to an emergency and can carry through a broad program in record time.

I am certain that the American people are appreciative of the work of this Special Session of the Seventy-third Congress.

## THE PRESIDENT AND CONGRESS

Please let me add that the past few months have given to me very special pleasure in the renewal of old friendships and the forming of new friendships among the House of Representatives. To each and every one of you I send my best wishes for a well deserved and happy holiday during the coming months.

### VETO OF REVENUE ACT OF 1948

The Constitution directs the President to return a bill of which he disapproves "with his objections, to that House in which it shall have originated." The message printed here accompanied President Truman's third consecutive veto of an income-tax reduction since the end of World War II. Its wording is typical of such messages; it is evident indeed that the President is a "Third House of Congress," able to substitute his own judgment for that of the legislature. The veto itself, however, was unusual, for Mr. Truman is the first President in history to veto a tax-reduction bill. The veto was overridden.

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#### *To the House of Representatives:*

I return herewith, without my approval, H. R. 4790, entitled "An act to reduce individual income tax payments, and for other purposes."

It is a matter of deep regret to me that I am compelled to take this action. If I could conscientiously approve tax reductions, I would gladly do so. But I am convinced that to reduce the income of the Government by \$5,000,000,000 at this time would exhibit a reckless disregard for the soundness of our economy and the finances of our Government.

All of us are aware that the world situation is one of uncertainty and, indeed, of danger. The United States, in common with other free nations, is taking positive action on many fronts to preserve conditions of peace with justice against the forces of dissension and chaos. In this endeavor, as I stated in my address to the Congress on



## THE PRESIDENT AND CONGRESS

March 17, 1948, "the United States has a tremendous responsibility to act according to the measure of our power for good in the world."

Under these conditions, the primary test which I must apply in considering this bill is whether or not it would contribute to the strength of the United States. My fundamental objection to the bill is that it would not strengthen, but instead would weaken, the United States.

This is true for two reasons.

First, the bill would reduce Government revenues to such an extent as to make likely a deficit in Government finances, at a time when responsible conduct of the financial affairs of this Nation requires a substantial surplus in order to reduce our large public debt and to be reasonably prepared against contingencies.

Second, the bill would greatly increase the danger of further inflation, by adding billions of dollars of purchasing power at a time when demand already exceeds supply at many strategic points in the economy, and when Government expenditures are necessarily rising.

.....

With wise and careful planning the American tax system can make an important contribution to economic progress. But if we dissipate the strength of our revenue system by ill-timed tax reduction, we shall sacrifice for many years our opportunities to lay a solid foundation for a more effective tax system. Major reforms are needed in all important areas of the Federal tax system—excise taxes, corporate taxes, individual income taxes, and estate and gift taxes. The enactment of H. R. 4790 would, by prematurely weakening the tax system, not only aggravate our immediate problems but also constitute a serious obstacle in the path of realizing many urgently needed fundamental tax reforms.

.....

## THE PRESIDENT AND CONGRESS

For the reasons I have set forth, H. R. 4790 is not compatible with the requirements of the critical international situation. It is not compatible with sound domestic economic and debt-management policies. If enacted, it would materially weaken this Nation's efforts to maintain peace abroad and prosperity at home.

It is bad policy to reduce taxes in a manner which would encourage inflation and bring greater hardship, not relief, to our people. It is bad policy to endanger the soundness of our national finances at a time when our responsibilities are great in an unsettled world.

I am confident that the men and women of our country prefer the maintenance of our national strength to a reduction in taxes under the present circumstances.

I consider it my clear duty, therefore, to return H. R. 4790 without my approval.

HARRY S. TRUMAN

### CONGRESSIONAL REQUESTS FOR INFORMATION

This group of documents proves that whatever else has changed since the days of Washington, the difference of opinion between President and Congress over the latter's power to force the production of executive papers has not. As a matter of law, this question remains unsettled; as a matter of fact, no President has yet been forced to surrender papers to Congress against his will.

#### President Washington and the Fourth Congress

This exchange between the House of Representatives and the President was a skirmish in the lengthy battle over the confirmation and implementation of the celebrated Jay Treaty. President Washington won this skirmish and the battle, too.

### RESOLUTION OF THE HOUSE OF REPRESENTATIVES, MARCH 24, 1796

*Resolved*, That the President of the United States be requested to lay before this House a copy of the instruc-

## THE PRESIDENT AND CONGRESS

tions to the Minister of the United States, who negotiated the treaty with the King of Great Britain, (communicated by his message of the first instant,) together with the correspondence and other documents relative to the said treaty; excepting such of the said papers as any existing negotiation may render improper to be disclosed.

*Ordered*, That Mr. Livingston and Mr. Gallatin be appointed a committee to wait on the President with the said resolution.

REPLY OF THE PRESIDENT, MARCH 30, 1796

*To the House of Representatives of the United States:*

With the utmost attention I have considered your resolution of the 24th instant, requesting me to lay before your House a copy of the instructions to the minister of the United States who negotiated the treaty with the King of Great Britain, together with the correspondence and other documents relative to that treaty, excepting such of the said papers as any existing negotiation may render improper to be disclosed.

In deliberating upon this subject it was impossible for me to lose sight of the principle which some have avowed in its discussion, or to avoid extending my views to the consequences which must flow from the admission of that principle.

I trust that no part of my conduct has ever indicated a disposition to withhold any information which the Constitution has enjoined upon the President as a duty to give, or which could be required of him by either House of Congress as a right; and with truth I affirm that it has been, as it will continue to be while I have the honor to preside in the Government, my constant endeavor to harmonize with the other branches thereof so far as the trust delegated to me by the people of the United States and my sense of the obligation it imposes to "preserve, protect, and defend the Constitution" will permit.

## THE PRESIDENT AND CONGRESS

The nature of foreign negotiations requires caution, and their success must often depend on secrecy; and even when brought to a conclusion a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic; for this might have a pernicious influence on future negotiations, or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate, the principle on which that body was formed confining it to a small number of members. To admit, then, a right in the House of Representatives to demand and to have as a matter of course all the papers respecting a negotiation with a foreign power would be to establish a dangerous precedent.

It does not occur that the inspection of the papers asked for can be relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment, which the resolution has not expressed. I repeat that I have no disposition to withhold any information which the duty of my station will permit or the public good shall require to be disclosed; and, in fact, all the papers affecting the negotiation with Great Britain were laid before the Senate when the treaty itself was communicated for their consideration and advice.

The course which the debate has taken on the resolution of the House leads to some observations on the mode of making treaties under the Constitution of the United States.

Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject; and from the first establishment of the Government to this moment my conduct has exemplified that

opinion—that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated thenceforward became the law of the land. . . .

It is a fact declared by the General Convention and universally understood that the Constitution of the United States was the result of a spirit of amity and mutual concession; and it is well known that under this influence the smaller States were admitted to an equal representation in the Senate with the larger States, and that this branch of the Government was invested with great powers, for on the equal participation of those powers the sovereignty and political safety of the smaller States were deemed essentially to depend.

If other proofs than these and the plain letter of the Constitution itself be necessary to ascertain the point under consideration, they may be found in the journals of the General Convention, which I have deposited in the office of the Department of State. In those journals it will appear that a proposition was made “that no treaty should be binding on the United States which was not ratified by a law,” and that the proposition was explicitly rejected.

As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; as the treaty with Great Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for can throw no light, and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request.

G<sup>O</sup> WASHINGTON

## THE PRESIDENT AND CONGRESS

### President Truman and the Eightieth Congress

On March 2, 1948, a subpoena was ordered by J. Parnell Thomas of the House Committee on Un-American Activities for the records pertaining to the clearance of Dr. Edward U. Condon, nuclear physicist and director of the National Bureau of Standards, by a Commerce Department loyalty board. The Committee's demand was refused by the Secretary of Commerce, acting under the direction of President Truman. A few days later the President ordered that no loyalty records be divulged without his consent.

The full House met this challenge with a 300-29 vote calling for the file on Dr. Condon, particularly for the letter of clearance that FBI Director J. Edgar Hoover had sent to the Secretary. The demand was again refused. Despite the threats of an enraged House, the file was never produced. On May 5, it was reported that the President had it in his "personal possession." Whatever the merits of the case, historically he stood on solid ground. Three of the documents of this noted clash follow.

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### THE PRESIDENT'S DIRECTIVE

The efficient and just administration of the employee loyalty program, under Executive Order No. 9835 of March 21, 1947, requires that reports, records, and files relative to the program be preserved in strict confidence. This is necessary in the interest of our national security and welfare, to preserve the confidential character and sources of information furnished, and to protect Government personnel against the dissemination of unfounded or disproved allegations. It is necessary also in order to insure the fair and just disposition of loyalty cases.

For these reasons, and in accordance with the long-established policy that reports rendered by the Federal Bureau of Investigation and other investigative agencies of the executive branch are to be regarded as confidential, all reports, records, and files relative to the loyalty of em-

## THE PRESIDENT AND CONGRESS

ployees or prospective employees (including reports of such investigative agencies), shall be maintained in confidence, and shall not be transmitted or disclosed except as required in the efficient conduct of business.

Any subpoena or demand or request for information, reports, or files of the nature described, received from sources other than those persons in the executive branch of the Government who are entitled thereto by reason of their official duties, shall be respectfully declined, on the basis of this directive, and the subpoena or demand or other request shall be referred to the Office of the President for such response as the President may determine to be in the public interest in the particular case. There shall be no relaxation of the provisions of this directive except with my express authority.

This directive shall be published in the Federal Register.

HARRY S. TRUMAN

### HOUSE RESOLUTION 522

*Resolved*, That the Secretary of Commerce is hereby directed to transmit forthwith to the House of Representatives the full text of a letter dated May 15, 1947, written by J. Edgar Hoover, Director of the Federal Bureau of Investigation, and addressed to W. Averell Harriman, Secretary of Commerce, relating to Dr. Edward U. Condon, Director of the National Bureau of Standards.

### THE ACTING SECRETARY'S REPLY

April 24, 1948

The Honorable the Speaker  
House of Representatives

Sir: In obedience to its provision, the Clerk transmitted to the Secretary of Commerce on April 23, 1948, an attested copy of House Resolution No. 522 of the Eightieth Congress.

The letter of the Acting Secretary of Commerce, dated

## THE PRESIDENT AND CONGRESS

April 23, 1948, in response to said resolution, addressed to the Clerk and received in his office at 11:25 o'clock a.m., on April 24, 1948, is transmitted herewith for the information of the House.

Very truly yours,  
John Andrews  
*Clerk of the House of Representatives*

Hon. John Andrews  
Clerk, House of Representatives

Dear Mr. Andrews: I refer to your communication of today transmitting an attested copy of House Resolution 522, the receipt of which I have already acknowledged. My action in response to the resolution is governed by the President's directive of March 13, 1948, which provides as follows: [see above]

The letter referred to in the resolution is part of the Loyalty Board files of the Department, and I must, therefore, respectfully decline to transmit the document to the House of Representatives. In further compliance with the directive, I am referring the matter to the President.

Sincerely yours,  
WILLIAM C. FOSTER

## PROPOSALS FOR THE IMPROVEMENT OF EXECUTIVE-LEGISLATIVE RELATIONS

Two of the leading plans for improving relations between President and Congress are presented here. The first resolution, introduced in the Seventy-ninth Congress by Representative Estes Kefauver of Tennessee, calls for the establishment of a question hour after the British pattern. The proposal for a Joint Legislative-Executive Council is taken from the report of the La Follette-Monroney Committee on the Organization of Congress. It was not included in the final Legislative Reorganization Act.



## THE PRESIDENT AND CONGRESS

### Kefauver Resolution

*Resolved*, That rule XXXIII of the Rules of the House of Representatives be amended by adding at the end thereof the following new paragraph:

“3. There shall be held in the House immediately following the reading of the Journal on at least one day in each period of two calendar weeks, but not oftener than one day in any one calendar week, a ‘report and question period,’ which shall not consume more than two hours, during which heads of departments, agencies, and independent establishments in the executive branch of the Government are requested to answer orally written and oral questions propounded by Members of the House. Each written question shall be submitted in triplicate to the committee having jurisdiction of the subject matter of such question, and, if approved by such committee, one copy shall be transmitted to the head of the department, agency, or independent establishment concerned, with an invitation to appear before the House, and one copy to the Committee on Rules with a request for allotment of time in a report and question period to answer such question. Subject to the limitations prescribed in this paragraph, the Committee on Rules shall determine the date for, and the length of time of, each report and question period, and shall allot the time in each period to the head of a department, agency, or independent establishment who has indicated his readiness to deliver oral answers to the questions transmitted to him. All written questions to be propounded in any one period shall be approved by one committee. With the consent of the committee which has approved the written questions to be propounded in any period, the head of a department, agency, or independent establishment may designate to represent him in such period the head of a principal division of such department, agency, or independent establishment, and, in the case of a department, the head thereof may designate

## THE PRESIDENT AND CONGRESS

the Under Secretary or an assistant secretary of such department. The latter half of each period shall be reserved for oral questions by Members of the House, one-half of such time to be controlled by the chairman of the committee which has approved the written questions propounded in such period and one-half by the ranking minority members of such committee. Each oral question shall be germane to the subject matter of at least one of the written questions propounded in such period. The time of each report and question period and the written questions to be answered in such period shall be printed in two daily editions of the Record appearing before the day on which such period is to be held, and the proceedings during such period shall be printed in the Record for such day."

### Proposal for a Joint Legislative-Executive Council

#### II. MAJORITY AND MINORITY POLICY COMMITTEES

Strong recommendations were made to your committee concerning the need for the formal expression within the Congress of the main policies of the majority and minority parties. These representations called for some mechanism which could bring about more party accountability for policies and pledges announced and made in the national platforms of the major political parties.

These recommendations were based on the theory that in a democracy national problems must be handled on a national basis. Only through the expression of the will of the people by their support of political parties on the basis of their platform pledges can the majority will be determined. Likewise the minority viewpoint is also expressed in support of the minority platform.

No one would claim that representative democracy as we know it today could exist without majority and minority parties. The 435 voices of the House and the 96 of the Senate would be a confused babel of conflicting tongues

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without party machinery. Instead of unorganized mob rule where the strength of varying viewpoints cannot be measured or determined, party government furnishes a tug-of-war in which the direction and strength of opposing viewpoints can be more or less accurately measured and weighed.

Under the American party system there are always two main groups, each checking the other and offering the choice of alternative courses of action. Around these two groups Congressmen can rally and express themselves, helping in party caucuses to determine the policy for their group.

Your committee recognizes the need for freedom of action on the part of the individual Member of Congress and his right to vote at any time against the announced policy of his party. But we feel that if party accountability for policies and pledges is to be achieved, stronger and more formal mechanisms are necessary. The present steering committees, an informal and little-used device, seldom meet and never steer.

We recommend that these be replaced with the formal establishment in the House and the Senate of majority and minority policy committees. The majority policy committees of the two Houses would meet jointly at frequent intervals, as would those of the minority, to formulate the over-all legislative policy of the two parties. The majority policy committee of each House would also hold frequent meetings to consider its role in expediting consideration and passage of matters pledged to the people by their party.

On issues where party policy is involved the decisions of these policy committees would be formally announced in the proceedings of Congress and formal records would be kept of such decisions. No member of either party would be required to follow such announced party policy except as he chose to do so. Each member would be free to vote

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as he saw fit, but the record of his action would be available to the public as a means of holding both the party and the individual accountable.

### 1. *Creation of Policy Committees*

RECOMMENDATION. That both the House and the Senate establish formal committees for the determination and expression of majority policy and minority policy. Each of these four committees would be composed of seven members appointed in its entirety at the opening of each new Congress. The majority and minority policy committees in both Houses would be appointed by their respective majority and minority conferences.

We feel that, in the establishment of such policy committees, the Congress chosen at the last general election should be controlling and that the policy-committee membership should therefore be chosen at the beginning of each new Congress. Membership on all policy committees would automatically expire at the close of each Congress.

### 2. *Joint Legislative-Executive Council*

RECOMMENDATION. That the majority policy committees of the Senate and House serve as a formal council to meet regularly with the Executive, to facilitate the formulation and carrying out of national policy, and to improve relationships between the executive and legislative branches of the Government.

In order to narrow the widening gap between the executive and the legislative branches, we recommend that the Senate and House majority policy committees serve also on a formal council to meet at regular intervals with the Executive and with such members of his Cabinet as may be desirable, to consult and collaborate in the formulation and carrying out of national policy and to improve relationships between the two branches of the Government.

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Improved understanding of each other's problems will be promoted by consultation before legislation is introduced to carry out pledged party promises and on matters of high administration policy. By giving congressional leaders a part in the formulation of policy, instead of calling upon them to enact programs prepared without their participation, better cooperation can be obtained.

It would also be desirable, we think, to include the minority policy committee from time to time in these joint conferences on broad questions of foreign and domestic policy as a further means of promoting mutual understanding and harmony between the legislature and the Executive.

The Legislative-Executive Council also would enable Congress to approach more directly the solution of difficulties and complaints resulting from administrative action. Formalizing the relationships between these two great branches of the Government, we believe, will improve and strengthen the performance of each.

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## THE ADMINISTRATION

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THROUGHOUT the first hundred years of the Republic the government remained a simple affair. President, Congress, federal judiciary, seven departments, the quasi-department of agriculture, the Smithsonian Institution—this was the government of the United States in 1876. Then came a revolution, which has yet to run its full course, as consequential for the people of the United States as that of 1776. In 1883 the Civil Service Commission was established by law, in 1887 the Interstate Commerce Commission, each to fill a long-standing need. Since that time, as the needs of the nation have become more numerous and insistent, the growth of the federal administration has been ever more swift and astounding. Today the civil administration numbers 2,000,000 officials in several hundred bureaus, departments, and authorities; there is scarcely a single aspect of American society with which some agency is not concerned. If administration is “government in action,” as Woodrow Wilson wrote, our contemporary government must be one part reflection and ninety-nine parts action. The President, Congress, and the courts remain the fundamental institutions of the constitutional system, but for most of us “the government” is the postman, the tax collector, the local veterans administrator, the forester, and even the army recruiting officer. It has been stylish in recent years to call these people “bureaucrats”; we would do better, in our efforts to achieve economy and efficiency in the federal administration, to think of them as “public servants.”

It is no easy matter for the student or citizen to make sense

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out of the federal administrative structure—to fix the relations of one agency to another, to trace the lines of authority and responsibility, to understand the processes through which these agencies carry out their statutory purposes, much less to distinguish the ECA from the FCA or the FCC from the ICC. Indeed, the only thing all these agencies seem to have in common is their dependence upon the will of Congress for their creation, powers, organization, appropriations, and continued existence. There are, however, numerous ways of classifying the agencies of the administration. One criterion is the nature of each agency's relation to the President, the official who, after all, has the only constitutional mandate to "take care that the laws be faithfully executed." The extent of an agency's responsibility to the President and of his supervision over it may usually be measured by the extent of his power of removal over the officials who are running it. From this point of view the various branches of the administration may be classified as follows:

1. Those that operate under the general supervision of the President: the Executive Office of the President, the nine departments (including the National Military Establishment), postwar agencies such as the War Assets Administration and the Economic Cooperation Administration, and at least four other agencies whose heads have not been recognized, but doubtless could be, as members of the President's cabinet, namely, the Federal Security Agency, the Federal Works Agency, the Housing and Home Finance Agency, and the Veterans Administration.

2. The "independent regulatory commissions"—*independent* because they were set up by Congress to operate outside the President's immediate area of responsibility, *regulatory* because their primary function is to regulate in the public interest some important phase of private economic enterprise, *commissions* because they are that particular type of administrative agency and are not, like the old departments, headed by one man. The Interstate Commerce Commission is the prototype of the independent commission; the Securities Exchange Commission (see page 314), the Federal Trade Commission, and the Federal Communications Commission are other leading examples. These commissions defy explanation in terms of the classic American

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doctrine of the separation of powers, since they are charged with the performance of legislative, executive, and judicial duties.

3. Those that are neither directly under the President nor designedly independent of him. This third group is a formless accumulation of boards and authorities established from time to time to serve particular national needs and apparently destined to function indefinitely in an administrative limbo. They are independent of the President, but only so long as he refuses to intrude. The potential extent of his supervision over any particular agency is a matter of uncertainty. Usually the President has no need or desire to interfere with their activities. In this category are the government corporations like the Tennessee Valley Authority (see page 276) and Reconstruction Finance Corporation, as well as isolated agencies of varied size and importance such as the Civil Service Commission, Railroad Retirement Board, International Boundary Commission, and Smithsonian Institution.

Documentary evidence of the organization and methods of the national administration is to be found throughout this book. The documents in this chapter provide background material for two of the vital contemporary problems of the administrative structure: personnel and reorganization.

### STATUTES AND ORDERS CONCERNING THE CIVIL SERVICE COMMISSION

The Civil Service Commission performs a notable service as the general employment agency for the federal government. Among its duties are classification of positions, recruitment and examination of personnel, prevention of partisan activity, control of promotions, and preparation of recommendations to President and Congress for improvements in personnel administration. The efficiency with which the Commission's affairs are conducted has a direct effect upon the entire government.

#### Revised Statute 1753

This passage first appeared in 1871 as a rider to an appropriations act. It constitutes the President's fundamental au-



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thority for participation in the improvement and expansion of the federal civil service.

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The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

### Civil Service Act

The Pendleton Act of 1883, the climax of a long and painful struggle for service reform, is the organic statute of the Civil Service Commission.

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*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

.....

SEC. 2. That it shall be the duty of said commissioners:  
*First.* To aid the President, as he may request, in pre-

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paring suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and officers to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

*Second.* And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

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Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body. . . .

Seventh, there shall be noncompetitive examinations in all proper cases before the Commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

Eighth, that notice shall be given in writing by the appointing power to said Commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said Commission. And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the Commission.

*Third.* Said Commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said Commission shall keep minutes of its own proceedings.

*Fourth.* Said Commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this act.

*Fifth.* Said Commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions

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thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act.

SEC. 3. That said Commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. . . . The Commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of examiners, and may at any time substitute any other person in said service living in such State or Territory in the place of anyone so selected. Such boards of examiners shall be so located as to make it reasonably convenient and inexpensive for applicants to attend before them; and where there are persons to be examined in any State or Territory, examinations shall be held therein at least twice in each year. It shall be the duty of the collector, postmaster, and other officers of the United States, at any place outside of the District of Columbia where examinations are directed by the President or by said board to be held, to allow the reasonable use of the public buildings for holding such examinations, and in all proper ways to facilitate the same.

.....

SEC. 7. That after the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be

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arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith. But nothing herein contained shall be construed to take from those honorably discharged from the military or naval service any preference conferred by the seventeen hundred and fifty-fourth section of the Revised Statutes, nor to take from the President any authority not inconsistent with this act conferred by the seventeen hundred and fifty-third section of said statutes; nor shall any officer not in the executive branch of the Government, or any person merely employed as a laborer or workman, be required to be classified hereunder; nor, unless by direction of the Senate, shall any person who has been nominated by the Senate be required to be classified or to pass an examination.

SEC. 8. That no person habitually using intoxicating beverages to excess shall be appointed to, or retained in, any office, appointment, or employment to which the provisions of this act are applicable.

SEC. 9. That whenever there are already two or more members of a family in the public service in the grades covered by this act, no other member of such family shall be eligible to appointment to any of said grades.

SEC. 10. That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of Representatives except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act. . . .

### Extension of Civil Service (Ramspeck Act)

The purpose of the Ramspeck Act of 1940 was to transfer most of the previously excepted positions in the administration into the keeping of the Civil Service Commission. The executive

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orders of President Roosevelt issued in 1941 under authority of this statute brought ninety-five per cent of the administration into the classified civil service.

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Notwithstanding any provisions of law to the contrary, the President is authorized by Executive order to cover into the classified civil service any offices or positions in or under an executive department, independent establishment, or other agency of the Government: *Provided*, That in the case of any federally owned and controlled corporation organized under the laws of any State, Territory, or possession of the United States (including the Philippine Islands), or the District of Columbia, the President is authorized to direct that such action be taken as will permit appointments to offices or positions in any such corporation to be made in accordance with the civil-service laws, consistently with the laws of any such State, Territory, or possession, or the District of Columbia, or with the charter or articles of incorporation of any such corporation: *Provided further*, That the provisions of this section shall not apply to offices or positions in the Tennessee Valley Authority or to any positions in the Work Projects Administration or to any position to which appointments are made by the President by and with the advice and consent of the Senate, or to positions of assistant United States district attorney.

SEC. 2. (a) The incumbent of any office or position which is covered into the classified civil service under the provisions of section 1 of this Act shall not thereby acquire a classified civil-service status, except (1) upon recommendation by the head of the agency concerned within one year after such office or position has been covered into the classified civil service, and certification within such period by such head to the Civil Service Commission that such incumbent has served with merit for not less than

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six months immediately prior to the date such office or position was covered into the classified civil service; and (2) upon passing such suitable noncompetitive examination as the Commission may prescribe: *Provided*, That any such incumbent shall be given only one such noncompetitive examination: *Provided further*, That any such incumbent who fails to pass the noncompetitive examination provided in his case shall be separated from the service not later than six months after the Commission advises the appointing officer that such employee has failed. . . .

### Executive Order Extending the Classified Civil Service

This order, dated April 23, 1941, was the most important one issued under the Ramspeck Act. It is estimated that 182,000 transfers to the classified service were worked by the act and the President's orders.

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By virtue of the authority vested in me by section 1 of the act of November 26, 1940, entitled "Extending the Classified Executive Civil Service of the United States" (54 Stat. 1211), by the Civil Service Act (22 Stat. 403), and by section 1753 of the Revised Statutes of the United States, it is hereby ordered as follows:

SEC. 1. All offices and positions in the executive civil service of the United States except (1) those that are temporary, (2) those expressly excepted from the provisions of section 1 of the said act of November 26, 1940, (3) those excepted from the classified service under Schedules A and B of the Civil Service Rules, and (4) those which now have a classified status, are hereby covered into the classified civil service of the Government.

SEC. 2. Section 1 of this order shall become effective on January 1, 1942, except that as to positions affected thereby which are vacant at any time after June 30, 1941, and before January 1, 1942, it shall become effective when the

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vacancies first exist during such period, and appointments to such vacant positions shall be made in accordance with the Civil Service Rules as amended by section 3 of this order, unless prior express permission is given by the Civil Service Commission for appointment without regard thereto.

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SEC. 6. Any person who in order to perform active service with the military or naval forces of the United States has left, or leaves, a position (other than a temporary position) which is covered into the classified civil service under section 1 of this order shall be reinstated in the department or agency to the position in which he last served or to a position of like seniority, status, and pay in the same department or agency, and upon reinstatement thereto may acquire a classified civil-service status: *Provided*, (1) That he has been honorably discharged from the military or naval service, (2) that he makes application for reinstatement within forty days of such discharge, (3) that the head of the department or agency concerned recommends within one year of his reinstatement that he be permitted to acquire a classified civil-service status and certifies that he has served with merit for at least six months, and (4) that he qualifies in such suitable noncompetitive examination as the Commission may prescribe.

FRANKLIN D. ROOSEVELT

## ACT ESTABLISHING COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH

The problem of administrative reorganization has never been more pressing than it is today. What may prove to be a basic reorganization of the confused administrative structure is presently in progress. Under the leadership of former President Herbert Hoover the twelve-man Commission authorized by this law of 1947 has completed its statutory tasks, chiefly through the agency of a series of expert "task forces." It is now



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up to the Eighty-first Congress to act realistically and decisively on the Hoover Commission's proposals.

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### DECLARATION OF POLICY

SEC. 1. It is hereby declared to be the policy of Congress to promote economy, efficiency, and improved service in the transaction of public business in the departments, bureaus, agencies, boards, commissions, offices, independent establishments, and instrumentalities of the executive branch of the Government by—

(1) limiting expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions;

(2) eliminating duplication and overlapping of services, activities, and functions;

(3) consolidating services, activities, and functions of a similar nature;

(4) abolishing services, activities, and functions not necessary to the efficient conduct of government; and

(5) defining and limiting executive functions, services, and activities.

### ESTABLISHMENT OF THE COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH

SEC. 2. For the purpose of carrying out the policy set forth in section 1 of this Act, there is hereby established a bipartisan commission to be known as the Commission on Organization of the Executive Branch of the Government (in this Act referred to as the "Commission").

### MEMBERSHIP OF THE COMMISSION

SEC. 3. (a) Number and Appointment.—The Commission shall be composed of twelve members as follows:

(1) Four appointed by the President of the United States, two from the executive branch of the Government and two from private life;

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(2) Four appointed by the President pro tempore of the Senate, two from the Senate and two from private life; and

(3) Four appointed by the Speaker of the House of Representatives, two from the House of Representatives and two from private life.

(b) Political affiliation.—Of each class of two members mentioned in subsection (a), not more than one member shall be from each of the two major political parties.

(c) Vacancies.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

## ORGANIZATION OF THE COMMISSION

SEC. 4. The Commission shall elect a Chairman and a Vice Chairman from among its members.  
.....

## EXPENSES OF THE COMMISSION

SEC. 8. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

## EXPIRATION OF THE COMMISSION

SEC. 9. Ninety days after the submission to the Congress of the report provided for in section 10(b), the Commission shall cease to exist.

## DUTIES OF THE COMMISSION

SEC. 10 (a) *Investigation.* The Commission shall study and investigate the present organization and methods of operation of all departments, bureaus, agencies, boards, commissions, offices, independent establishments, and instrumentalities of the executive branch of the Government, to determine what changes therein are necessary in their opinion to accomplish the purposes set forth in section 1 of this Act.

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(b) *Report.* Within ten days after the Eighty-first Congress is convened and organized, the Commission shall make a report of its findings and recommendations to the Congress.

## POWERS OF THE COMMISSION

SEC. 11. (a) *Hearings and Sessions.* The Commission, or any member thereof, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places, and take such testimony, as the Commission or such member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member.

(b) *Obtaining Official Data.* The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics for the purpose of this Act; and each such department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized and directed to furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman or Vice Chairman.

## REORGANIZATION ACT OF 1939

Administrative reorganization is best achieved by the administration itself, pursuant to congressional authorization and subject to congressional veto. A likely model for future reorganization laws is this celebrated statute of 1939 under which five reorganization plans were submitted to Congress and were permitted to go into effect. Of particular interest in this law were the limitations placed on the President's power by a jealous Congress and the provisions for executive proposal and legislative disposal, a reversal of the normal legislative process.

## THE ADMINISTRATION

SEC. 1. (a) The Congress hereby declares that by reason of continued national deficits beginning in 1931 it is desirable to reduce substantially Government expenditures and that such reduction may be accomplished in some measure by proceeding immediately under the provisions of this Act. The President shall investigate the organization of all agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes:

(1) To reduce expenditures to the fullest extent consistent with the efficient operation of the Government;

(2) To increase the efficiency of the operations of the Government to the fullest extent practicable within the revenues;

(3) To group, coordinate, and consolidate agencies of the Government, as nearly as may be, according to major purposes;

(4) To reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies as may not be necessary for the efficient conduct of the Government; and

(5) To eliminate overlapping and duplication of effort.

(b) The Congress declares that the public interest demands the carrying out of the purposes specified in subsection (a) and that such purposes may be accomplished in great measure by proceeding immediately under the provisions of this title, and can be accomplished more speedily thereby than by the enactment of specific legislation.

SEC. 2. When used in this title, the term "agency" means any executive department, commission, independent establishment, corporation owned or controlled by the United States, board, bureau, division, service, office, authority, or administration, in the executive branch of the Government.

SEC. 3. No reorganization plan under section 4 shall provide—

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(a) For the abolition or transfer of an executive department or all the functions thereof or for the establishment of any new executive department;

(b) In the case of the following agencies, for the transfer, consolidation, or abolition of the whole or any part of such agency or of its head, or of all or any of the functions of such agency or of its head: Civil Service Commission, Coast Guard, Engineer Corps of the United States Army, Mississippi River Commission, Federal Communications Commission, General Accounting Office, Interstate Commerce Commission, National Labor Relations Board, Securities and Exchange Commission, Board of Tax Appeals, United States Employees' Compensation Commission, United States Maritime Commission, United States Tariff Commission, Veterans' Administration, National Mediation Board, National Railroad Adjustment Board, Railroad Retirement Board, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System; or

(c) For changing the name of any executive department or the title of its head, or for designating any agency as "Department" or its head as "Secretary"; or

(d) For the continuation of any agency beyond the period authorized by law for the existence of such agency; or

(e) For the continuation of any function of any agency beyond the period authorized by law for the exercise of such function; or

(f) For authorizing any agency to exercise any function which is not expressly authorized by law.

SEC. 4. Whenever the President, after investigation, finds that—

(a) the transfer of the whole or any part of any agency or the functions thereof to the jurisdiction and control of any other agency; or

## THE ADMINISTRATION

(b) the consolidation of the functions vested in any agency; or

(c) the abolition of the whole or any part of any agency which agency or part (by reason of transfers under this Act or otherwise, or by reason of termination of its functions in any manner) does not have, or upon the taking effect of the reorganizations specified in the reorganization plan will not have, any functions, is necessary to accomplish one or more of the purposes of section 1 (a), he shall—

(d) prepare a reorganization plan for the making of the transfers, consolidations, and abolitions, as to which he has made findings and which he includes in the plan. . . .

(e) transmit such plan (bearing an identifying number) to the Congress, together with a declaration that, with respect to each transfer, consolidation, or abolition referred to in paragraph (a), (b), or (c) of this section and specified in the plan, he has found that such transfer, consolidation, or abolition is necessary to accomplish one or more of the purposes of section 1 (a). The delivery to both Houses shall be on the same day and shall be made to each House while it is in session.

The President, in his message transmitting a reorganization plan, shall state the reduction of expenditures which it is probable will be brought about by the taking effect of the reorganizations specified in the plan.

SEC. 5. The reorganizations specified in the plan shall take effect in accordance with the plan:

(a) Upon the expiration of sixty calendar days after the date on which the plan is transmitted to the Congress, but only if during such sixty-day period there has not been passed by the two Houses a concurrent resolution stating in substance that the Congress does not favor the reorganization plan.

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(b) If Congress adjourns sine die before the expiration of the sixty-day period, a new sixty-day period shall begin on the opening day of the next succeeding regular or special session. A similar rule shall be applicable in the case of subsequent adjournments sine die before the expiration of sixty days.

.....

SEC. 11. If the reorganizations specified in a reorganization plan take effect, the reorganization plan shall be printed in the Statutes at Large in the same volume as the public laws, and shall be printed in the Federal Register.

SEC. 12. No reorganization specified in a reorganization plan shall take effect unless the plan is transmitted to the Congress before January 21, 1941.

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THE JUDICIARY

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IN that part of *The Federalist* devoted to a demonstration of the “insufficiency of the present Confederation to the preservation of the Union,” Hamilton singled out the lack of a national judiciary as the “circumstance which crowns the defects of the Confederation.” The necessity for a national system of courts was vigorously acknowledged by the Convention at Philadelphia, and Article III was considered by many of the framers to be the most important part of the new Constitution. The judicial article bears repeated study, for on its few phrases is based our imposing system of national courts.

The position of the courts in the constitutional system is commonly described as *independent*. The federal judiciary, although instituted by Congress, is considered to enjoy an independent constitutional existence. It stands alongside the President and Congress and is tied in with these other major branches by the intricate system of checks and balances. The independence of the judiciary arises from the separation of powers; as Hamilton wrote in his great essay on the courts in *The Federalist* (No. 78), “The complete independence of the courts of justice is peculiarly essential in a limited Constitution.” It is the duty of the courts, particularly of the Supreme Court, to maintain the limits staked out by the words and assumptions of the Constitution. The separation of powers, the federal system, and the Bill of Rights have their final line of defense in the Supreme Court.

It is in this three-way defense of the Constitution and its underlying principles that the Supreme Court (and the lower



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federal courts, too) exercises the power of judicial review. Judicial review may be briefly defined as the power of the court, in deciding a case before it, to assess the administrative actions or laws in question and, if they are contrary to the Constitution (as the judges read it), to declare them unenforceable. An action or law judged unenforceable becomes null and void and therefore "unconstitutional." This power of the courts extends to all statutes and most administrative actions of federal, state, and local governments, if brought before the court in regular cases or controversies. The power of the Supreme Court to declare acts of Congress unconstitutional is the most celebrated aspect of judicial review.

The power of judicial review was not granted in the Constitution but was first asserted by Chief Justice John Marshall in the noted case of *Marbury v. Madison*. Opponents of this power have claimed that Marshall "usurped" it. It is true that *Marbury v. Madison* was a judicial tour de force, and that Marshall picked a very weak case in which to establish a very great doctrine. Nevertheless, we can read for ourselves in the records of those times that the doctrine of judicial review was understood and generally accepted well before Marshall came to the bench. His opinion was based directly upon Hamilton's powerful reasoning in *The Federalist*. The very nature of the Constitution teaches us, Hamilton maintained, that "whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former." This is the great power of judicial review, another unique American contribution to the art of government. As a matter of interest, the Supreme Court has held acts of Congress unconstitutional in only about eighty cases.

The documentary materials printed here tell only part of the judicial story. The student must also read such cases as *Marbury v. Madison*, *Luther v. Borden*, and *Erie Railroad Company v. Tompkins* for an understanding of the federal courts and judicial review. Yet the three documents presented in these pages do illustrate a fundamental if neglected principle of the national judiciary. Independent as they are, the courts depend almost completely on the will, and good will, of Congress. The Constitution declares that "the judicial power of the

## THE JUDICIARY

United States shall be vested in one Supreme Court” and defines the original jurisdiction of that court and the extent of the judicial power in general. All else—the size, salaries, sessions, appellate jurisdiction of the Supreme Court and the very existence of the lower federal courts (which now include eleven circuit courts of appeals and some ninety district courts)—is regulated by statute. Although the federal judges would go on drawing their undiminished salaries indefinitely, their courts and jurisdiction could be abolished tomorrow.

Needless to say, the courts have nothing to fear. Congress represents the people, and the people have a respect for the Supreme Court that no amount of 5-4 decisions and Black-Jackson vendettas seems to dispel. The judiciary may be the weakest of the three branches since, as Hamilton reminded us, it “has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever.” Yet the courts have a strength of their own. If any one doubts their power, let him think on the rise of T. Alan Goldsborough.

### JUDICIARY ACT OF 1789

This statute of September 24, 1789, organized the federal judiciary. Its antiquity and importance place it almost on a par with the Constitution. Many of its provisions, for example section 8, are valid to this day. Of particular interest are section 13, which was at issue in *Marbury v. Madison*; section 25, which furnishes clear evidence that the First Congress subscribed to the doctrine of judicial review; and section 35, which established the office of Attorney General.

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SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States in Congress assembled*, That the supreme court of the United States shall consist of a chief justice and five associate justices, any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the First Monday of August. . . .

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SEC. 2. *And be it further enacted*, That the United States shall be, and they hereby are divided into thirteen districts. . . .

SEC. 3. *And be it further enacted*, That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four sessions. . . .

SEC. 4. *And be it further enacted*, That the before mentioned districts, except those of Maine and Kentucky, shall be divided into three circuits, and be called the eastern, the middle, and the southern circuit. . . .

.....

SEC. 8. *And be it further enacted*, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: "I, A. B., do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as \_\_\_\_\_, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God."

SEC. 9. *And be it further enacted*, That the district courts shall have, exclusively of the courts of the several States, cognizance of all crimes and offences that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the high seas; where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted . . . And the trial of issues in fact, in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury. . . .

.....

## THE JUDICIARY

SEC. 11. *And be it further enacted,* That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State. And shall have exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable therein. . . . And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions hereinafter provided. . . .

.....

SEC. 13. *And be it further enacted,* That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul, or vice consul, shall be a party. And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the sev-

## THE JUDICIARY

eral states, in the cases herein after specially provided for; and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus*, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

SEC. 14. *And be it further enacted*, That all the before-mentioned courts of the United States, shall have power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify. . . .

.....

SEC. 25. *And be it further enacted*, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a

treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. . . .

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SEC. 35. *And be it further enacted*, That in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation

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for his services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.

### JUDICIARY AND JUDICIAL PROCEDURE

The laws that regulate the structure and functions of the federal courts were overhauled and recodified in an act of June 25, 1948. The resulting Judiciary and Judicial Procedure, Title 28 of the United States Code, would fill most of this book. Only a few of the important provisions are included here.

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### PART I.—ORGANIZATION OF COURTS

#### CHAPTER 1—SUPREME COURT

SEC. 1. The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

SEC. 2. The Supreme Court shall hold at the seat of government a term of court commencing on the first Monday in October of each year and may hold such adjourned or special terms as may be necessary.

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SEC. 5. The Chief Justice shall receive a salary of \$25,-500 a year, and each associate justice shall receive a salary of \$25,000 a year. . . .

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### CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES ·

SEC. 331. The Chief Justice of the United States shall summon annually the chief judges of the judicial circuits to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. . . .

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

The Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

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### CHAPTER 17—RESIGNATION AND RETIREMENT OF JUDGES

SEC. 371. Any justice or judge of the United States appointed to hold office during good behavior who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned.

Any justice or judge of the United States appointed to hold office during good behavior may retain his office but retire from regular active service after attaining the age of seventy years and after serving at least ten years continuously or otherwise. He shall, during the remainder of his lifetime, continue to receive the salary of the office.



## THE JUDICIARY

The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires.

Whenever any circuit or district judge eligible to resign or retire under this section does neither, and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. If such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge shall not be filled.

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### CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

SEC. 452. All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.

The continued existence or expiration of a term of court in no way affects the power of the court to do any act or take proceeding.

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SEC. 454. Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

SEC. 455. Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

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## THE JUDICIARY

SEC. 458. No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.

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### PART IV—JURISDICTION AND VENUE

#### CHAPTER 81—SUPREME COURT

SEC. 1251. (a) The Supreme Court shall have original and exclusive jurisdiction of:

- (1) All controversies between two or more States;
- (2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

- (1) All actions or proceedings brought by ambassadors or other public ministers of foreign states or to which consuls or vice consuls of foreign states are parties;
- (2) All controversies between the United States and a State;
- (3) All actions or proceedings by a State against the citizens of another State or against aliens.

SEC. 1252. Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands and any court of record of Alaska, Hawaii and Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

A party who has received notice of appeal under this section shall take any subsequent appeal or cross appeal to

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the Supreme Court. All appeals or cross appeals taken to other courts prior to such notice shall be treated as taken directly to the Supreme Court.

SEC. 1253. Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

SEC. 1254. Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

SEC. 1255. Cases in the Court of Claims may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted on petition of the United States or the claimant;

(2) By certification of any question of law by the Court of Claims in any case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions on such question.

SEC. 1256. Cases in the Court of Customs and Patent Appeals may be reviewed by the Supreme Court by writ of certiorari.

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SEC. 1257. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

### CHAPTER 83—COURTS OF APPEALS

SEC. 1291. The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

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### CHAPTER 85—DISTRICT COURTS; JURISDICTION

SEC. 1331. The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

SEC. 1332. (a) The district courts shall have original jurisdiction of all civil actions where the matter in con-

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troverſy exceeds the ſum or value of \$3,000 excluſive of intereſt and coſts, and is between:

- (1) Citizens of different States;
  - (2) Citizens of a State, and foreign ſtates or citizens or ſubjects thereof;
  - (3) Citizens of different States and in which foreign ſtates or citizens or ſubjects thereof are additional parties.
- (b) The word “States,” as uſed in this ſection, includes the Territories and the Diſtrict of Columbia.

SEC. 1333. The diſtrict courts ſhall have original ju-  
riſdiction, excluſive of the courts of the States, of:

- (1) Any civil caſe of admiralty or maritime ju-  
riſdiction, ſaving to the libellant or petitioner in every caſe any  
other remedy to which he is otherwiſe entitled.
- (2) Any prize brought into the United States and all  
proceedings for the condemnation of property taken as  
prize.

SEC. 1334. The diſtrict courts ſhall have original ju-  
riſdiction, excluſive of the courts of the States, of all matters  
and proceedings in bankruptcy.

.....

SEC. 1336. Except as otherwiſe provided by Act of Con-  
greſs, the diſtrict courts ſhall have ju-  
riſdiction of any civil  
action to enforce, enjoin, ſet aſide, annul or ſuſpend, in  
whole or in part, any order of the Interstate Commerce  
Commiſſion.

SEC. 1337. The diſtrict courts ſhall have original ju-  
riſdiction of any civil action or proceeding ariſing under  
any Act of Congreſs regulating commerce or protecting  
trade and commerce againſt reſtraints and monopolies.

SEC. 1338. (a) The diſtrict courts ſhall have original  
ju-  
riſdiction of any civil action ariſing under any Act of  
Congreſs relating to patents, copyrights and trade-marks.  
Such ju-  
riſdiction ſhall be excluſive of the courts of the  
ſtates in patent and copyright caſes.

## THE JUDICIARY

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent or trade-mark laws.

SEC. 1339. The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to the postal service.

SEC. 1340. The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Customs Court.

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SEC. 1345. Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

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SEC. 1357. The district courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his person or property on account of any act done by him, under any Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any State.

SEC. 1358. The district courts shall have original jurisdiction of all proceedings to condemn real estate for the use of the United States or its departments or agencies.

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## HABEAS CORPUS

Chapter 153 of Title 28 regulates the issuance of the "great writ" of habeas corpus, the fundamental safeguard of individual liberty in Anglo-American law. Some of these provisions date

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back to the Judiciary Act of 1789. The Constitution, it should be noted, does not itself authorize the issuance of this writ; it simply assumes (Article I, section 9, paragraph 2) that it will be part of our law.

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### CHAPTER 153—HABEAS CORPUS

SEC. 2241. (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. . . .

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

SEC. 2242. Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

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It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

SEC. 2243. A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

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## FOREIGN RELATIONS

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THE most vital and publicized function the national government performs today is the prosecution of our interests in foreign relations. The United States has had thrust upon it the starring role in the international drama. The future of the world depends to a large degree upon the skill with which we interpret and act out our part.

Several general propositions concerning the subject of foreign affairs are useful to remember. First, the power of the national government is plenary and exclusive. The states are rigidly excluded from participation in this field. Second, in the words of Justice Sutherland in the *Curtiss-Wright* case (1936), "The investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution." The powers of foreign affairs, "if they had never been mentioned in the Constitution, would have vested in the federal government as necessary concomitants of nationality." Third, the doctrine that forbids Congress to delegate legislative power to the executive branch has virtually no application in this field. The Supreme Court has repeatedly acknowledged that Congress must be permitted to grant the President "a degree of discretion . . . which would not be admissible were domestic affairs alone involved." Fourth, the responsibility for foreign affairs is constitutionally shared by three organs (contrary to the unitary pattern in most other countries): President, Senate, and Congress. The Supreme Court, under the convenient doctrine of "political questions," has taken itself almost completely out of the picture. Finally,

## FOREIGN RELATIONS

despite this joint responsibility, the position of the President is paramount, if not dominant.

This executive primacy comes under vigorous attack from time to time, chiefly from those who object to a particular President's policy even more strongly than to his independent execution of it, and it is true that the President exercises a more unfettered leadership than the framers intended. Yet the development of presidential ascendancy seems to have been inevitable. Constitution, laws, custom of nations, and logic of history have combined to place the President in this dominant position. Secrecy, dispatch, unity, continuity, and access to information—these ingredients of successful diplomacy, of which Jay wrote in *The Federalist*, are exclusive properties of the presidential office.

The function of international relations divides conveniently into two categories: the formulation of policy and the conduct of affairs. The first of these is a joint undertaking in which the President proposes, Congress disposes, and the wishes of the people eventually prevail. The President's leadership is generally vindicated. Our foremost historical policy is significantly known as the *Monroe Doctrine*, and in considering our foremost present policy, the *Marshall Plan*, we must remember that no one official in the government is more directly responsible to any other official than is the Secretary of State to the President. From Washington's Proclamation of Neutrality in 1793 to the Berlin crisis in 1948, the President has repeatedly committed the nation to decisive attitudes and actions abroad, more than once to war itself. The Houses of Congress have occasionally compelled the President to abandon a policy already put forward or have forced distasteful policies upon him, as in 1812 and 1898. Nevertheless, a stubborn President is hard to budge, a crusading President hard to thwart. The diplomatic lives of the two Roosevelts are proof enough.

The conduct of foreign affairs is a presidential duty, and Congress finds it extremely difficult to exercise control and criticism. John Marshall spoke of the President as "the sole organ of the nation in its external relations, and its sole representative with foreign nations." The State Department carries on its many activities in the name of the President, and

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he is in control of every procedure through which our foreign relations are conducted: negotiation of treaties and executive agreements, recognition of new governments and nations, adjustment (within stated limits) of tariff barriers, selection and supervision of diplomatic personnel, direction of our UN delegation, and communications with foreign powers. As Commander-in-Chief he disposes our armed forces abroad and engages in what is popularly known as "presidential warmaking." Foreign relations as a short-range proposition is a presidential prerogative, and short-range actions can have long-range consequences.

Congress must have its due. The course of foreign relations since the war demonstrates the importance of the national legislature. The Senate, of course, looms above the House by reason of its constitutional power to dispose of treaties and nominations. Yet the two Houses together exercise important functions: they are specifically empowered to declare war and regulate foreign commerce; they are often in a position to hamstring vital treaties by refusing to give them statutory implementation; their committees on foreign relations, especially that of the Senate (see page 129), exercise considerable oversight and restraint; they may together or separately pass resolutions that have strong moral if not legal standing; they may enact legislation that strengthens or cripples the President's hand; and most important, they hold on for dear life to the power of the purse. Postwar foreign relations are an expensive necessity, and Congress still insists, as the continuing battle for ERP appropriations reminds us, that it must like the tune before it will pay the piper.

The Constitution, as Professor E. S. Corwin has written, is a standing "invitation to struggle for the privilege of directing American foreign policy." Yet there is more cooperation than conflict, despite the great attention history books pay to certain epic battles between President and Senate. This comforting truth we can ascribe to two factors: the superior weapons the President brings to the struggle and the general realization on the part of both President and Congress that this is one field where statesmanship and not politics had best govern our actions.

FOREIGN RELATIONS  
HAY-PAUNCEFOTE TREATY

It was the intention of the framers that American foreign relations be carried on largely through the formal process of treaty making, in which President and Senate would share the responsibility. Most of our long-range diplomatic bargains have been worked out in this way, with the President in control at every stage except that of Senate confirmation. This celebrated treaty, which made possible the building of the Panama Canal, was a second attempt to remove the obstacle of the Clayton-Bulwer Treaty of 1850. The first Hay-Pauncefote Treaty prohibited American fortification of the proposed canal and was so radically amended by the Senate that Great Britain dropped further negotiations. Satisfied by the second treaty, the Senate gave speedy approval. Supporters of the two-thirds rule make much of this incident.

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The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed as their Plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, the Right Honourable Lord Pauncefote, G.C.B., G.C.M.G.,

## FOREIGN RELATIONS

His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States;

Who, having communicated to each other their full powers which were found to be in due and proper form, have agreed upon the following Articles:

### ARTICLE I.

The High Contracting Parties agree that the present Treaty shall supersede the afore-mentioned Convention of the 19th April, 1850.

### ARTICLE II.

It is agreed that the canal may be constructed under the auspices of the Government of the United States. . . .

### ARTICLE III.

The United States adopts, as the basis of the neutralization of such ship canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder. . . .

### ARTICLE IV.

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries

## FOREIGN RELATIONS

traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty.

### ARTICLE V.

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within six months from the date hereof.

In faith whereof the respective Plenipotentiaries have signed this Treaty and thereunto affixed their seals.

Done in duplicate at Washington, the 18th day of November, in the year of Our Lord one thousand nine hundred and one.

JOHN HAY [seal]  
PAUNCEFOTE [seal]

### RUSH-BAGOT AGREEMENT

The executive agreement is now well established as an alternative to the treaty. Agreements may be formal or informal, perpetual or temporary, open or secret. Congress has authorized the President to reach formal agreements on a variety of subjects (for an example, see page 223), and he may also effect such agreements on the basis of his constitutional powers as Commander-in-Chief and leader of foreign affairs. This noted agreement of 1817, completed through an exchange of diplomatic notes, was later converted into a treaty.

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WASHINGTON, April 28 1817

The Undersigned, His Britannick Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honour to acquaint Mr. Rush, that having laid before His Majesty's Government the correspondence which passed last year between the Secretary of the Department of State and the Undersigned upon the subject of a proposal to reduce the Naval Force of the respective Countries upon the Ameri-

## FOREIGN RELATIONS

can Lakes, he has received the commands of His Royal Highness The Prince Regent to acquaint the Government of the United States, that His Royal Highness is willing to accede to the proposition made to the Undersigned by the Secretary of the Department of State in his note of the 2d of August last.

His Royal Highness, acting in the name and on the behalf of His Majesty, agrees, that the Naval Force to be maintained upon the American Lakes by His Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side—that is

On Lake Ontario to one Vessel not exceeding one hundred Tons burthen and armed with one eighteen pound cannon.

On the Upper Lakes to two Vessels not exceeding like burthen each and armed with like force.

On the waters of Lake Champlain to one Vessel not exceeding like burthen and armed with like force.

And His Royal Highness agrees, that all other armed Vessels on these Lakes shall be forthwith dismantled, and that no other Vessels of War shall be there built or armed.

His Royal Highness further agrees, that if either Party should hereafter be desirous of annulling this Stipulation, and should give notice to that effect to the other Party, it shall cease to be binding after the expiration of six months from the date of such notice.

The Undersigned has it in command from His Royal Highness the Prince Regent to acquaint the American Government, that His Royal Highness has issued orders to His Majesty's Officers on the Lakes directing, that the Naval Force so to be limited shall be restricted to such services as will in no respect interfere with the proper duties of the armed vessels of the other Party.

The Undersigned has the honour to renew to Mr. Rush the assurances of his highest consideration.

CHARLES BAGOT

## FOREIGN RELATIONS

DEPARTMENT OF STATE,

April 29, 1817

The Undersigned, acting Secretary of State, has the honor to acknowledge the receipt of Mr. Bagot's note of the 28th of this month, informing him that, having laid before the Government of His Britannick Majesty, the correspondence which passed last year between the Secretary of State and himself upon the subject of a proposal to reduce the naval force of the two countries upon the American Lakes, he had received the commands of His Royal Highness The Prince Regent to inform this Government that His Royal Highness was willing to accede to the proposition made by the Secretary of State in his note of the second of August last.

The Undersigned has the honor to express to Mr. Bagot the satisfaction which The President feels at His Royal Highness The Prince Regent's having acceded to the proposition of this Government as contained in the note alluded to. And in further answer to Mr. Bagot's note, the Undersigned, by direction of The President, has the honor to state, that this Government, cherishing the same sentiments expressed in the note of the second of August, agrees, that the naval force to be maintained upon the Lakes by the United States and Great Britain shall henceforth, be confined to the following vessels on each side, that is: . . . .

The Undersigned is also directed by The President to state, that proper orders will be forthwith issued by this Government to restrict the naval force thus limited to such services as will in no respect interfere with the proper duties of the armed vessels of the other party.

The Undersigned eagerly avails himself of this opportunity to tender to Mr. Bagot the assurances of his distinguished consideration and respect.

RICHARD RUSH.



## FOREIGN RELATIONS

### JOINT RESOLUTION ENDING WAR WITH GERMANY

The regular legislative process provides another road around the two-thirds rule. The annexations both of Texas and of Hawaii were accomplished by joint resolutions; the entrance of the United States into the International Labor Organization was authorized in the same manner. After the refusal of two thirds of the Senate to confirm the Treaty of Versailles, Congress resorted to this device to end the war with the Central Powers July 2, 1921.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war declared to exist between the Imperial German Government and the United States of America by the joint resolution of Congress approved April 6, 1917, is hereby declared at an end.*

SEC. 2. That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise.

SEC. 3. That the state of war declared to exist between the Imperial and Royal Austro-Hungarian Government and the United States of America by the joint resolution of Congress approved December 7, 1917, is hereby declared at an end.

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## FOREIGN RELATIONS

SEC. 6. Nothing herein contained shall be construed to repeal, modify or amend the provisions of the joint resolution "declaring that certain Acts of Congress, joint resolutions and proclamations shall be construed as if the war had ended and the present or existing emergency expired," approved March 3, 1921, or the passport control provisions of an Act entitled "An act making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1922," approved March 2, 1921; nor to be effective to terminate the military status of any person now in desertion from the military or naval service of the United States, nor to terminate the liability to prosecution and punishment under the Selective Service law, approved May 18, 1917, of any person who failed to comply with the provisions of said Act, or of Acts amendatory thereof.

## UNITED NATIONS PARTICIPATION ACT

A major aspect of our postwar foreign relations is the leading role we play in the activities of the United Nations. The conditions of American participation are fixed by this statute of 1945, which provides excellent instruction in the principles of foreign relations. The leadership of the President has never been more clearly acknowledged than in sections 2(e) and 3.

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SEC. 2. (a) The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States at the seat of the United Nations who shall have the rank and status of envoy extraordinary and ambassador plenipotentiary, shall receive annual compensation of \$20,000, and shall hold office at the pleasure of the President. Such representative shall represent the United States in the Security Council of the United Nations and shall perform such other functions in connection with the participation of the United States in the United Nations as the President may from time to time direct.

## FOREIGN RELATIONS

(b) The President, by and with the advice and consent of the Senate, shall appoint a deputy representative of the United States to the Security Council who shall have the rank and status of envoy extraordinary and minister plenipotentiary, shall receive annual compensation of \$12,000, and shall hold office at the pleasure of the President. Such deputy representative shall represent the United States in the Security Council of the United Nations in the event of the absence or disability of the representative.

(c) The President, by and with the advice and consent of the Senate, shall designate from time to time to attend a specified session or specified sessions of the General Assembly of the United Nations not to exceed five representatives of the United States and such number of alternates as he may determine consistent with the rules of procedure of the General Assembly. One of the representatives shall be designated as the senior representative. Such representatives and alternates shall each be entitled to receive compensation at the rate of \$12,000 per annum for such period as the President may specify, except that no member of the Senate or House of Representatives or officer of the United States who is designated under this subsection as a representative of the United States or as an alternate to attend any specified session or specified sessions of the General Assembly shall be entitled to receive such compensation.

(d) The President may also appoint from time to time such other persons as he may deem necessary to represent the United States in the organs and agencies of the United Nations at such salaries, not to exceed \$12,000 each per annum, as he shall determine, but the representative of the United States in the Economic and Social Council and in the Trusteeship Council of the United Nations shall be appointed only by and with the advice and consent of the Senate, except that the President may, without the advice and consent of the Senate, designate any officer of the

## FOREIGN RELATIONS

United States to act, without additional compensation, as the representative of the United States in either such Council (A) at any specified meeting thereof in the absence or disability of the regular representative, or (B) in connection with a specified subject matter at any specified meeting of either such Council in lieu of the regular representative. The advice and consent of the Senate shall also be required for the appointment by the President of the representative of the United States in any commission that may be formed by the United Nations with respect to atomic energy or in any other commission of the United Nations to which the United States is entitled to appoint a representative.

(e) Nothing contained in this section shall preclude the President or the Secretary of State, at the direction of the President, from representing the United States at any meeting or session of any organ or agency of the United Nations.

SEC. 3. The representatives provided for in section 2 hereof, when representing the United States in the respective organs and agencies of the United Nations, shall, at all times, act in accordance with the instructions of the President transmitted by the Secretary of State unless other means of transmission is directed by the President, and such representatives shall, in accordance with such instructions, cast any and all votes under the Charter of the United Nations.

SEC. 4. The President shall, from time to time as occasion may require, but not less than once each year, make reports to the Congress of the activities of the United Nations and of the participation of the United States therein. He shall make special current reports on decisions of the Security Council to take enforcement measures under the provisions of the Charter of the United Nations, and on the participation therein under his instructions, of the representative of the United States.

## FOREIGN RELATIONS

SEC. 5. (a) Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided, pursuant to article 41 of said Charter, are to be employed to give effect to its decisions under said Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, and regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.

(b) Any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to paragraph (a) of this section shall, upon conviction, be fined not more than \$10,000 or, if a natural person, be imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, concerned in such violation shall be forfeited to the United States.

SEC. 6. The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution, providing for the numbers and types of armed forces, their degree of readiness and general location, and the nature of facilities and assistance, including rights of passage, to be made available to

## FOREIGN RELATIONS

the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements the armed forces, facilities, or assistance provided for therein: *Provided*, That nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements.

.....

## ECONOMIC COOPERATION ACT

The European Recovery Program is our leading postwar foreign policy. The purpose of this great plan, first broached by Secretary Marshall in June, 1947, may be plainly read in the first section of the momentous law that converted this policy into a legislative reality. The actual appropriation for the first year of the act was \$300,000,000 less than the sum authorized in section 114(c). The importance of Congress in the implementation of foreign policy is dramatically illustrated by the whole history of ERP.

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## FINDINGS AND DECLARATION OF POLICY

SEC. 102. (a) Recognizing the intimate economic and other relationships between the United States and the nations of Europe, and recognizing that disruption following in the wake of war is not contained by national frontiers, the Congress finds that the existing situation in Europe endangers the establishment of a lasting peace, the general welfare and national interest of the United States,

## FOREIGN RELATIONS

and the attainment of the objectives of the United Nations. The restoration or maintenance in European countries of principles of individual liberty, free institutions, and genuine independence rests largely upon the establishment of sound economic conditions, stable international economic relationships, and the achievement by the countries of Europe of a healthy economy independent of extraordinary outside assistance. The accomplishment of these objectives calls for a plan of European recovery, open to all such nations which cooperate in such plan, based upon a strong production effort, the expansion of foreign trade, the creation and maintenance of internal financial stability, and the development of economic cooperation, including all possible steps to establish and maintain equitable rates of exchange and to bring about the progressive elimination of trade barriers. Mindful of the advantages which the United States has enjoyed through the existence of a large domestic market with no internal trade barriers, and believing that similar advantages can accrue to the countries of Europe, it is declared to be the policy of the people of the United States to encourage these countries through a joint organization to exert sustained common efforts as set forth in the report of the Committee of European Economic Cooperation signed at Paris on September 22, 1947, which will speedily achieve that economic cooperation in Europe which is essential for lasting peace and prosperity. It is further declared to be the policy of the people of the United States to sustain and strengthen principles of individual liberty, free institutions, and genuine independence in Europe through assistance to those countries of Europe which participate in a joint recovery program based upon self-help and mutual cooperation: *Provided*, That no assistance to the participating countries herein contemplated shall seriously impair the economic stability of the United States. It is further declared to be the policy of the United States that continuity of assistance provided by the United States should, at all times, be de-

## FOREIGN RELATIONS

pendent upon continuity of cooperation among countries participating in the program.

### PURPOSES OF TITLE

(b) It is the purpose of this title to effectuate the policy set forth in subsection (a) of this section by furnishing material and financial assistance to the participating countries in such a manner as to aid them, through their own individual and concerted efforts, to become independent of extraordinary outside economic assistance within the period of operations under this title, by—

(1) promoting industrial and agricultural production in the participating countries;

(2) furthering the restoration or maintenance of the soundness of European currencies, budgets, and finances; and

(3) facilitating and stimulating the growth of international trade of participating countries with one another and with other countries by appropriate measures including reduction of barriers which may hamper such trade.

### PARTICIPATING COUNTRIES

SEC. 103. (a) As used in this title, the term “participating country” means—

(1) any country, together with dependent areas under its administration, which signed the report of the Committee of European Economic Cooperation at Paris on September 22, 1947; and

(2) any other country (including any of the zones of occupation of Germany, any areas under international administration or control, and the Free Territory of Trieste or either of its zones) wholly or partly in Europe, together with dependent areas under its administration; provided such country adheres to, and for so long as it remains an adherent to, a joint program for European recovery designed to accomplish the purposes of this title.

.....



## FOREIGN RELATIONS

### ESTABLISHMENT OF ECONOMIC COOPERATION ADMINISTRATION

SEC. 104. (a) There is hereby established, with its principal office in the District of Columbia, an agency of the Government which shall be known as the Economic Cooperation Administration, hereinafter referred to as the Administration. The Administration shall be headed by an Administrator for Economic Cooperation, hereinafter referred to as the Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate of \$20,000 per annum. The Administrator shall be responsible to the President and shall have a status in the executive branch of the Government comparable to that of the head of an executive department. Except as otherwise provided in this title, the administration of the provisions of this title is hereby vested in the Administrator and his functions shall be performed under the control of the President.

.....

### GENERAL FUNCTIONS OF ADMINISTRATOR

SEC. 105. (a) The Administrator, under the control of the President, shall in addition to all other functions vested in him by this title—

- (1) review and appraise the requirements of participating countries for assistance under the terms of this title;
- (2) formulate programs of United States assistance under this title, including approval of specific projects which have been submitted to him by the participating countries;
- (3) provide for the efficient execution of any such programs as may be placed in operation; and
- (4) terminate provision of assistance or take other remedial action as provided in section 118 of this title.

(b) In order to strengthen and make more effective the conduct of the foreign relations of the United States—

- (1) the Administrator and the Secretary of State shall

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keep each other fully and currently informed on matters, including prospective action, arising within the scope of their respective duties which are pertinent to the duties of the other;

(2) whenever the Secretary of State believes that any action, proposed action, or failure to act on the part of the Administrator is inconsistent with the foreign-policy objectives of the United States, he shall consult with the Administrator and, if differences of view are not adjusted by consultation, the matter shall be referred to the President for final decision;

(3) whenever the Administrator believes that any action, proposed action, or failure to act on the part of the Secretary of State in performing functions under this title is inconsistent with the purposes and provisions of this title, he shall consult with the Secretary of State and, if differences of view are not adjusted by consultation, the matter shall be referred to the President for final decision.

.....

### UNITED STATES SPECIAL REPRESENTATIVE ABROAD

SEC. 108. There shall be a United States Special Representative in Europe who shall (a) be appointed by the President, by and with the advice and consent of the Senate, (b) be entitled to receive the same compensation and allowances as a chief of mission, class 1, within the meaning of the Act of August 13, 1946 (60 Stat. 999), and (c) have the rank of ambassador extraordinary and plenipotentiary. He shall be the representative of the Administrator, and shall also be the chief representative of the United States Government to any organization of participating countries which may be established by such countries to further a joint program for European recovery, and shall discharge in Europe such additional responsibilities as may be assigned to him with the approval of the President in furtherance of the purposes of this title. He may also be designated as the United States representative on the Eco-

## FOREIGN RELATIONS

nomic Commission for Europe. He shall receive his instructions from the Administrator. . . .

### SPECIAL ECA MISSIONS ABROAD

SEC. 109. (a) There shall be established for each participating country . . . a special mission for economic cooperation under the direction of a chief who shall be responsible for assuring the performance within such country of operations under this title. The chief shall be appointed by the Administrator, shall receive his instructions from the Administrator, and shall report to the Administrator on the performance of the duties assigned to him. The chief of the special mission shall take rank immediately after the chief of the United States diplomatic mission in such country.

.....

### NATURE AND METHOD OF ASSISTANCE

SEC. 111. (a) The Administrator may, from time to time, furnish assistance to any participating country by providing for the performance of any of the functions set forth in paragraphs (1) through (5) of this subsection when he deems it to be in furtherance of the purposes of this title, and upon the terms and conditions set forth in this title and such additional terms and conditions consistent with the provisions of this title as he may determine to be necessary and proper.

(1) Procurement from any source, including Government stocks on the same basis as procurement by Government agencies under Public Law 375 (Seventy-ninth Congress) for their own use, of any commodity which he determines to be required for the furtherance of the purposes of this title. As used in this title, the term "commodity" means any commodity, material, article, supply, or goods necessary for the purposes of this title.

(2) Processing, storing, transporting, and repairing any commodities, or performing any other services with re-

## FOREIGN RELATIONS

spect to a participating country which he determines to be required for accomplishing the purposes of this title. The Administrator shall, in providing for the procurement of commodities under authority of this title, take such steps as may be necessary to assure, so far as is practicable, that at least 50 per centum of the gross tonnage of commodities, procured within the United States out of funds made available under this title and transported abroad on ocean vessels, is so transported on United States flag vessels to the extent such vessels are available at market rates.

(3) Procurement of and furnishing technical information and assistance.

(4) Transfer of any commodity or service, which transfer shall be signified by delivery of the custody and right of possession and use of such commodity, or otherwise making available any such commodity, or by rendering a service to a participating country or to any agency or organization representing a participating country.

(5) The allocation of commodities or services to specific projects designed to carry out the purposes of this title, which have been submitted to the Administrator by participating countries and have been approved by him.

.....

(c) (1) The Administrator may provide assistance for any participating country . . . through grants or upon payment in cash, or on credit terms, or on such other terms of payment as he may find appropriate, including payment by the transfer to the United States (under such terms and in such quantities as may be agreed to between the Administrator and the participating country) of materials which are required by the United States as a result of deficiencies or potential deficiencies in its own resources. . . .

## PROTECTION OF DOMESTIC ECONOMY

SEC. 112: (a) The Administrator shall provide for the procurement in the United States of commodities under

## FOREIGN RELATIONS

this title in such a way as to (1) minimize the drain upon the resources of the United States and the impact of such procurement upon the domestic economy, and (2) avoid impairing the fulfillment of vital needs of the people of the United States.

(b) The procurement of petroleum and petroleum products under this title shall, to the maximum extent practicable, be made from petroleum sources outside the United States; and, in furnishing commodities under the provisions of this title, the Administrator shall take fully into account the present and anticipated world shortage of petroleum and its products and the consequent undesirability of expansion in petroleum-consuming equipment where the use of alternate fuels or other sources of power is practicable.

.....

## AUTHORIZATION OF APPROPRIATIONS

SEC. 114. . . . (c) In order to carry out the provisions of this title with respect to those participating countries which adhere to the purposes of this title, and remain eligible to receive assistance hereunder, such funds shall be available as are hereafter authorized and appropriated to the President from time to time through June 30, 1952, to carry out the provisions and accomplish the purposes of this title: *Provided, however,* That for carrying out the provisions and accomplishing the purposes of this title for the period of one year following the date of enactment of this Act, there are hereby authorized to be so appropriated not to exceed \$4,300,000,000. Nothing in this title is intended nor shall it be construed as an express or implied commitment to provide any specific assistance, whether of funds, commodities, or services, to any country or countries. The authorization in this title is limited to the period of twelve months in order that subsequent Congresses may pass on any subsequent authorizations.

.....

## FOREIGN RELATIONS

### BILATERAL AND MULTILATERAL UNDERTAKINGS

SEC. 115. (a) The Secretary of State, after consultation with the Administrator, is authorized to conclude, with individual participating countries or any number of such countries or with an organization representing any such countries, agreements in furtherance of the purposes of this title. . . .

(b) The provision of assistance under this title results from the multilateral pledges of the participating countries to use all their efforts to accomplish a joint recovery program based upon self-help and mutual cooperation as embodied in the report of the Committee of European Economic Cooperation signed at Paris on September 22, 1947, and is contingent upon continuous effort of the participating countries to accomplish a joint recovery program through multilateral undertakings and the establishment of a continuing organization for this purpose. In addition to continued mutual cooperation of the participating countries in such a program, each such country shall conclude an agreement with the United States in order for such country to be eligible to receive assistance under this title. Such agreement shall provide for the adherence of such country to the purposes of this title and shall, where applicable, make appropriate provision, among others, for—

(1) promoting industrial and agricultural production in order to enable the participating country to become independent of extraordinary outside economic assistance . . .

(2) taking financial and monetary measures necessary to stabilize its currency, establish or maintain a valid rate of exchange, to balance its governmental budget as soon as practicable, and generally to restore or maintain confidence in its monetary system;

(3) cooperating with other participating countries in facilitating and stimulating an increasing interchange of goods and services among the participating countries and

## FOREIGN RELATIONS

with other countries and cooperating to reduce barriers to trade among themselves and with other countries;

.....

(5) facilitating the transfer to the United States by sale, exchange, barter, or otherwise for stock-piling or other purposes, for such period of time as may be agreed to and upon reasonable terms and in reasonable quantities, of materials which are required by the United States as a result of deficiencies or potential deficiencies in its own resources, and which may be available in such participating country after due regard for reasonable requirements for domestic use and commercial export of such country;

.....

(7) publishing in such country and transmitting to the United States, not less frequently than every calendar quarter after the date of the agreement, full statements of operations under the agreement, including a report of the use of funds, commodities, and services received under this title;

(8) furnishing promptly, upon request of the United States, any relevant information which would be of assistance to the United States in determining the nature and scope of operations and the use of assistance provided under this title;

(9) recognizing the principle of equity in respect to the drain upon the natural resources of the United States and of the recipient countries, by agreeing to negotiate (a) a future schedule of minimum availabilities to the United States for future purchase and delivery of a fair share of materials which are required by the United States as a result of deficiencies or potential deficiencies in its own resources . . . ;

.....

## WESTERN HEMISPHERE COUNTRIES

SEC. 116. The President shall take appropriate steps to encourage all countries in the Western Hemisphere to

## FOREIGN RELATIONS

make available to participating countries such assistance as they may be able to furnish.

### OTHER DUTIES OF THE ADMINISTRATOR

SEC. 117. (a) The Administrator, in furtherance of the purposes of section 115(b) (5), and in agreement with a participating country, shall, whenever practicable, promote, by means of funds made available for the purposes of this title, an increase in the production in such participating country of materials which are required by the United States as a result of deficiencies or potential deficiencies in the resources within the United States.

(b) The Administrator, in cooperation with the Secretary of Commerce, shall facilitate and encourage, through private and public travel, transport, and other agencies, the promotion and development of travel by citizens of the United States to and within participating countries.

.....

(d) The Administrator is directed to refuse delivery insofar as practicable to participating countries of commodities which go into the production of any commodity for delivery to any nonparticipating European country which commodity would be refused export licenses to those countries by the United States in the interest of national security. Whenever the Administrator believes that the issuance of a license for the export of any commodity to any country wholly or partly in Europe which is not a participating country is inconsistent with the purposes and provisions of this title, he shall so advise the department, agency, or officer in the executive branch of the Government exercising the authority with respect to such commodity granted to the President by section 6 of the Act of July 2, 1940 (54 Stat. 714), as amended, and, if differences of view are not adjusted by consultation, the matter shall be referred to the President for final decision.



## FOREIGN RELATIONS

### TERMINATION OF ASSISTANCE

SEC. 118. The Administrator, in determining the form and measure of assistance provided under this title to any participating country, shall take into account the extent to which such country is complying with its undertakings embodied in its pledges to other participating countries and in its agreement concluded with the United States under section 115. The Administrator shall terminate the provision of assistance under this title to any participating country whenever he determines that (1) such country is not adhering to its agreement concluded under section 115, or is diverting from the purposes of this title assistance provided hereunder, and that in the circumstances remedial action other than termination will not more effectively promote the purposes of this title or (2) because of changed conditions, assistance is no longer consistent with the national interest of the United States. Termination of assistance to any country under this section shall include the termination of deliveries of all supplies scheduled under the aid program for such country and not yet delivered.

.....

### UNITED NATIONS

SEC. 121. (a) The President is authorized to request the cooperation of or the use of the services and facilities of the United Nations, its organs and specialized agencies, or other international organizations, in carrying out the purposes of this title, and may make payments, by advancements or reimbursements, for such purposes, out of funds made available for the purposes of this title, as may be necessary therefor, to the extent that special compensation is usually required for such services and facilities. Nothing in this title shall be construed to authorize the Administrator to delegate to or otherwise confer upon any international or foreign organization or agency any of his au-

## FOREIGN RELATIONS

thority to decide the method of furnishing assistance under this title to any participating country or the amount thereof.

(b) The President shall cause to be transmitted to the Secretary General of the United Nations copies of reports to Congress on the operations conducted under this title.

(c) Any agreements concluded between the United States and participating countries, or groups of such countries, in implementation of the purposes of this title, shall be registered with the United Nations if such registration is required by the Charter of the United Nations.

## TERMINATION OF PROGRAM

SEC. 122. (a) After June 30, 1952, or after the date of the passage of a concurrent resolution by the two Houses of Congress before such date, which declares that the powers conferred on the Administrator by or pursuant to subsection (a) of section 111 of this title are no longer necessary for the accomplishment of the purposes of this title, whichever shall first occur, none of the functions authorized under such provisions may be exercised; . . .

## REPORTS TO CONGRESS

SEC. 123. The President from time to time, but not less frequently than once every calendar quarter through June 30, 1952, and once every year thereafter until all operations under this title have been completed, shall transmit to the Congress a report of operations under this title, including the text of bilateral and multilateral agreements entered into in carrying out the provisions of this title. . . .

## JOINT CONGRESSIONAL COMMITTEE

SEC. 124. (a) There is hereby established a joint congressional committee to be known as the Joint Committee on Foreign Economic Cooperation (hereinafter referred

## FOREIGN RELATIONS

to as the committee), to be composed of ten members as follows:

(1) Three members who are members of the Committee on Foreign Relations of the Senate, two from the majority and one from the minority party, to be appointed by the chairman of the committee; two members who are members of the Committee on Appropriations of the Senate, one from the majority and one from the minority party, to be appointed by the chairman of the committee; and

(2) Three members who are members of the Committee on Foreign Affairs of the House, two from the majority and one from the minority party, to be appointed by the chairman of the committee; and two members who are members of the Committee on Appropriations of the House, one from the majority and one from the minority party, to be appointed by the chairman of the committee.

A vacancy in the membership of the committee shall be filled in the same manner as the original selection. The committee shall elect a chairman from among its members.

(b) It shall be the function of the committee to make a continuous study of the programs of United States economic assistance to foreign countries, and to review the progress achieved in the execution and administration of such programs. Upon request, the committee shall aid the several standing committees of the Congress having legislative jurisdiction over any part of the programs of United States economic assistance to foreign countries; and it shall make a report to the Senate and the House of Representatives, from time to time, concerning the results of its studies, together with such recommendations as it may deem desirable. The Administrator, at the request of the committee, shall consult with the committee from time to time with respect to his activities under this Act.

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NATIONAL DEFENSE

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THE problems of national defense are much in our thinking today. The people of the United States, who a few short years ago thought the Articles of War were guns and tanks, now argue with vigor and familiarity about the necessity of universal military training, the difficulties of unification, and the putative strength of the atomic bomb. The weapons are new but not the arguments, and for once the framers would not feel lost. They, too, were deeply concerned about "the common Defence."

This concern is apparent in a reading of the Constitution, which is full of provisions for the defense of the nation. The war powers granted to Congress are numerous and extensive. The national legislature may tax and spend for the common defense, "raise and support armies," "provide and maintain a navy," "make rules for the government of the land and naval forces," organize and regulate the militia, suspend the writ of habeas corpus in rebellion or invasion, and declare war. These powers may be exercised as vigorously and broadly as circumstances require. Although the government of the United States is one of limited powers, this is one area in which there are no final limits. Long ago Hamilton wrote, "*These powers ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them.*" The government must be considered to possess all powers for the preservation of the nation, even the power of dictatorship in extreme necessity.

## NATIONAL DEFENSE

To this basic principle of national defense may be added three others; public opinion on this subject would be more lucid and effective if we would keep them constantly in mind. First, national defense is a national function. The states have nothing to do with war, except as agents of the national government. This truth is symbolized in the modern title of the state volunteer militia, the National Guard. A second principle is "the supremacy of the civil over the military authority." This democratic belief, which is perpetually guaranteed by the position of our highest civil officer as supreme commander of the armed forces, is especially important to recall in arguments over the domestic control of atomic energy for military purposes. Finally, the dominant position of the President in foreign relations is matched by his dominant position in national defense. The war powers belong primarily to Congress, but the execution of all defense legislation is the exclusive prerogative of the Commander-in-Chief.

The leadership of the President, which Congress can rarely refuse to follow, prevails in peace as well as war. The Constitution gives Congress the power to declare war, but only once in history (1812) have we gone to war as the result of a close congressional vote. Most declarations of war have merely "recognized" what was already an accomplished fact. The President has always been able to meet force with force in the protection of American lives and interests all over the world, and much blood and treasure have been spent in our undeclared wars. The peacetime leadership of the President in the overall preparation for war is demonstrated in the two documents printed in this chapter. Yet we must remember that they are *laws*; Congress had to be prevailed upon to enact them. The President's peacetime power to train our forces at home and deploy them abroad is subject to this one major restriction: men and money must be authorized by law. He cannot deploy what Congress has not given.

In war the hopes and fears of the nation are focused in the White House. Chief Justice Hughes, who knew whereof he spoke, once stated, "There is no more impressive spectacle than that of the President of the Republic in time of war." The sources of the wartime President's overriding authority are

## NATIONAL DEFENSE

three: the lengthy catalogue of permanent laws that go into effect in a national emergency; the array of temporary laws, which Congress needs no persuasion to pass, giving him the power to draft men, seize factories, allocate priorities, and spend billions of dollars; and the fathomless reservoir of power hidden in the simple phrase "Commander-in-Chief." Abraham Lincoln first demonstrated the vast reach of the President's constitutional authority, and Woodrow Wilson showed how the modern President can demand and then execute enormous delegations of warmaking power. Franklin D. Roosevelt, a careful student of history, built his wartime ascendancy on the famous deeds of both these commanders. It is still impossible to define the precise boundaries of the President's warmaking authority since, as Attorney General Murphy pointed out to the Senate in 1939, its "extent and limitations are largely dependent upon conditions and circumstances." Given the circumstance of atomic attack, who can say where this power would halt?

## NATIONAL SECURITY ACT

The statutory basis of our present exertions for the common defense is provided by this law of 1947. Written by men who had considered with care the mistakes of the past, it is an excellent first step, but only a first step, towards effective unification of the armed forces. Section 202(a) provides a new version of the old song, "War is too important to be left to the Generals."

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### TITLE I—COORDINATION FOR NATIONAL SECURITY

#### NATIONAL SECURITY COUNCIL

SEC. 101. (a) There is hereby established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the Presi-

## NATIONAL DEFENSE

dent with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of the President; the Secretary of State; the Secretary of Defense, appointed under section 202; the Secretary of the Army, referred to in Section 205; the Secretary of the Navy; the Secretary of the Air Force, appointed under section 207; the Chairman of the National Security Resources Board, appointed under section 103; and such of the following named officers as the President may designate from time to time: The Secretaries of the executive departments, the Chairman of the Munitions Board appointed under section 213, and the Chairman of the Research and Development Board appointed under section 214; but no such additional member shall be designated until the advice and consent of the Senate has been given to his appointment to the office the holding of which authorizes his designation as a member of the Council.

(b) In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith. . . .

NATIONAL DEFENSE

CENTRAL INTELLIGENCE AGENCY

SEC. 102. (a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence, who shall be the head thereof. The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services or from among individuals in civilian life. The Director shall receive compensation at the rate of \$14,000 a year.

.....

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: *Provided*, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: *Provided further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further*, That the Director of Central Intelligence



NATIONAL DEFENSE

shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

.....

NATIONAL SECURITY RESOURCES BOARD

SEC. 103. (a) There is hereby established a National Security Resources Board (hereinafter in this section referred to as the "Board") to be composed of the Chairman of the Board and such heads or representatives of the various executive departments and independent agencies as may from time to time be designated by the President to be members of the Board. The Chairman of the Board shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$14,000 a year.

.....

(c) It shall be the function of the Board to advise the President concerning the coordination of military, industrial, and civilian mobilization, including—

(1) policies concerning industrial and civilian mobilization in order to assure the most effective mobilization and maximum utilization of the Nation's manpower in the event of war;

(2) programs for the effective use in time of war of the Nation's natural and industrial resources for military and civilian needs, for the maintenance and stabilization of the civilian economy in time of war, and for the adjustment of such economy to war needs and conditions;

(3) policies for unifying, in time of war, the activities

## NATIONAL DEFENSE

of Federal agencies and departments engaged in or concerned with production, procurement, distribution, or transportation of military or civilian supplies, materials, and products;

(4) the relationship between potential supplies of, and potential requirements for, manpower, resources, and productive facilities in time of war;

(5) policies for establishing adequate reserves of strategic and critical materials, and for the conservation of these reserves;

(6) the strategic relocation of industries, services, government, and economic activities, the continuous operation of which is essential to the Nation's security.

(d) In performing its functions, the Board shall utilize to the maximum extent the facilities and resources of the departments and agencies of the Government.

### TITLE II—THE NATIONAL MILITARY ESTABLISHMENT

#### ESTABLISHMENT OF THE NATIONAL MILITARY ESTABLISHMENT

SEC. 201. (a) There is hereby established the National Military Establishment, and the Secretary of Defense shall be the head thereof.

(b) The National Military Establishment shall consist of the Department of the Army, the Department of the Navy, and the Department of the Air Force, together with all other agencies created under title II of this Act.

#### SECRETARY OF DEFENSE

SEC. 202. (a) There shall be a Secretary of Defense, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate: *Provided*, That a person who has within ten years been on active duty as a commissioned officer in a Regular component of the armed services shall not be eligible for appointment as Secretary of Defense. The Secretary of Defense shall be

## NATIONAL DEFENSE

the principal assistant to the President in all matters relating to the national security. Under the direction of the President and subject to the provisions of this Act he shall perform the following duties:

(1) Establish general policies and programs for the National Military Establishment and for all of the departments and agencies therein;

(2) Exercise general direction, authority, and control over such departments and agencies;

(3) Take appropriate steps to eliminate unnecessary duplication or overlapping in the fields of procurement, supply, transportation, storage, health, and research;

(4) Supervise and coordinate the preparation of the budget estimates of the departments and agencies comprising the National Military Establishment; formulate and determine the budget estimates for submittal to the Bureau of the Budget; and supervise the budget programs of such departments and agencies under the applicable appropriation Act:

*Provided*, That nothing herein contained shall prevent the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force from presenting to the President or to the Director of the Budget, after first so informing the Secretary of Defense, any report or recommendation relating to his department which he may deem necessary: *And provided further*, That the Department of the Army, the Department of the Navy, and the Department of the Air Force shall be administered as individual executive departments by their respective Secretaries and all powers and duties relating to such departments not specifically conferred upon the Secretary of Defense by this Act shall be retained by each of their respective Secretaries.

(b) The Secretary of Defense shall submit annual written reports to the President and the Congress covering expenditures, work, and accomplishments of the National

## NATIONAL DEFENSE

Military Establishment, together with such recommendations as he shall deem appropriate.

.....

### DEPARTMENT OF THE ARMY

SEC. 205. (a) The Department of War shall hereafter be designated the Department of the Army, and the title of the Secretary of War shall be changed to Secretary of the Army. Changes shall be made in the titles of other officers and activities of the Department of the Army as the Secretary of the Army may determine.

(b) All laws, orders, regulations, and other actions relating to the Department of War or to any officer or activity whose title is changed under this section shall, insofar as they are not inconsistent with the provisions of this Act, be deemed to relate to the Department of the Army within the National Military Establishment or to such officer or activity designated by his or its new title.

.....

(c) In general the United States Army, within the Department of the Army, shall include land combat and service forces and such aviation and water transport as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land. It shall be responsible for the preparation of land forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Army to meet the needs of war.

### DEPARTMENT OF THE NAVY

SEC. 206. (a) The term "Department of the Navy" as used in this Act shall be construed to mean the Department of the Navy at the seat of government; the headquarters, United States Marine Corps; the entire operat-

## NATIONAL DEFENSE

ing forces of the United States Navy, including naval aviation, and of the United States Marine Corps, including the reserve components of such forces; all field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Department of the Navy; and the United States Coast Guard when operating as a part of the Navy pursuant to law.

(b) In general the United States Navy, within the Department of the Navy, shall include naval combat and service forces and such aviation as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It shall be responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned, and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war.

All naval aviation shall be integrated with the naval service as part thereof within the Department of the Navy. Naval aviation shall consist of combat and service and training forces, and shall include land-based naval aviation, air transport essential for naval operations, all air weapons and air techniques involved in the operations and activities of the United States Navy, and the entire remainder of the aeronautical organization of the United States Navy, together with the personnel necessary therefor.

The Navy shall be generally responsible for naval reconnaissance, antisubmarine warfare, and protection of shipping.

The Navy shall develop aircraft, weapons, tactics, technique, organization and equipment of naval combat and service elements; matters of joint concern as to these functions shall be coordinated between the Army, the Air Force, and the Navy.

(c) The United States Marine Corps, within the De-

## NATIONAL DEFENSE

partment of the Navy, shall include land combat and service forces and such aviation as may be organic therein. The Marine Corps shall be organized, trained, and equipped to provide fleet marine forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. It shall be the duty of the Marine Corps to develop, in coordination with the Army and the Air Force, those phases of amphibious operations which pertain to the tactics, technique, and equipment employed by landing forces. In addition, the Marine Corps shall provide detachments and organizations for service on armed vessels of the Navy, shall provide security detachments for the protection of naval property at naval stations and bases, and shall perform such other duties as the President may direct: *Provided*, That such additional duties shall not detract from or interfere with the operations for which the Marine Corps is primarily organized. The Marine Corps shall be responsible, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Marine Corps to meet the needs of war.

## DEPARTMENT OF THE AIR FORCE

SEC. 207. (a) Within the National Military Establishment there is hereby established an executive department to be known as the Department of the Air Force, and a Secretary of the Air Force, who shall be the head thereof. The Secretary of the Air Force shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

.....

(c) The term "Department of the Air Force" as used in this Act shall be construed to mean the Department of the Air Force at the seat of government and all field head-

## NATIONAL DEFENSE

quarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Air Force.

(d) There shall be in the Department of the Air Force an Under Secretary of the Air Force and two Assistant Secretaries of the Air Force, who shall be appointed from civilian life by the President by and with the advice and consent of the Senate.

.....

(f) So much of the functions of the Secretary of the Army and of the Department of the Army, including those of any officer of such Department, as are assigned to or under the control of the Commanding General, Army Air Forces, or as are deemed by the Secretary of Defense to be necessary or desirable for the operations of the Department of the Air Force or the United States Air Force, shall be transferred to and vested in the Secretary of the Air Force and the Department of the Air Force. . . .

## UNITED STATES AIR FORCE

SEC. 208. (a) The United States Air Force is hereby established under the Department of the Air Force. The Army Air Forces, the Air Corps, United States Army, and the General Headquarters Air Force (Air Force Combat Command), shall be transferred to the United States Air Force.

(b) There shall be a Chief of Staff, United States Air Force, who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years from among the officers of general rank who are assigned to or commissioned in the United States Air Force. Under the direction of the Secretary of the Air Force, the Chief of Staff, United States Air Force, shall exercise command over the United States Air Force and shall be charged with the duty of carrying into execution all lawful

## NATIONAL DEFENSE

and directions which may be transmitted to

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In general the United States Air Force shall include on forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive operations. The Air Force shall be responsible for the creation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for expansion of the peacetime components of the Air Force to meet the needs of war.

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## WAR COUNCIL

210. There shall be within the National Military Establishment a War Council composed of the Secretary of Defense, as Chairman, who shall have power of decision; the Secretary of the Army; the Secretary of the Navy; the Secretary of the Air Force; the Chief of Staff, United States Army; the Chief of Naval Operations; and the Chief of Staff, United States Air Force. The War Council shall advise the Secretary of Defense on matters of broad policy affecting the armed forces, and shall consider and report on such other matters as the Secretary of Defense may require.

## JOINT CHIEFS OF STAFF

211. (a) There is hereby established within the National Military Establishment the Joint Chiefs of Staff, which shall consist of the Chief of Staff, United States Army; the Chief of Naval Operations; the Chief of Staff, United States Air Force; and the Chief of Staff to the Commander in Chief, if there be one.

Subject to the authority and direction of the President.



## NATIONAL DEFENSE

dent and the Secretary of Defense, it shall be the duty of the Joint Chiefs of Staff—

(1) to prepare strategic plans and to provide for the strategic direction of the military forces;

(2) to prepare joint logistic plans and to assign to the military services logistic responsibilities in accordance with such plans;

(3) to establish unified commands in strategic areas when such unified commands are in the interest of national security.

(4) to formulate policies for joint training of the military forces;

(5) to formulate policies for coordinating the education of members of the military forces;

(6) to review major material and personnel requirements of the military forces, in accordance with strategic and logistic plans; and

(7) to provide United States representation on the Military Staff Committee of the United Nations in accordance with the provisions of the Charter of the United Nations.

(c) The Joint Chiefs of Staff shall act as the principal military advisers to the President and the Secretary of Defense and shall perform such other duties as the President and the Secretary of Defense may direct or as may be prescribed by law.

.....

## MUNITIONS BOARD

SEC. 213. (a) There is hereby established in the National Military Establishment a Munitions Board (hereinafter in this section referred to as the "Board").

(b) The Board shall be composed of a Chairman, who shall be the head thereof, and an Under Secretary or Assistant Secretary from each of the three military departments, to be designated in each case by the Secretaries of their respective departments. The Chairman shall be

## NATIONAL DEFENSE

appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$14,000 a year.

(c) It shall be the duty of the Board under the direction of the Secretary of Defense and in support of strategic and logistic plans prepared by the Joint Chiefs of Staff—

(1) to coordinate the appropriate activities within the National Military Establishment with regard to industrial matters, including the procurement, production, and distribution plans of the departments and agencies comprising the Establishment;

(2) to plan for the military aspects of industrial mobilization;

(3) to recommend assignment of procurement responsibilities among the several military services and to plan for standardization of specifications and for the greatest practicable allocation of purchase authority of technical equipment and common use items on the basis of single procurement;

(4) to prepare estimates of potential production, procurement, and personnel for use in evaluation of the logistic feasibility of strategic operations;

(5) to determine relative priorities of the various segments of the military procurement programs;

(6) to supervise such subordinate agencies as are or may be created to consider the subjects falling within the scope of the Board's responsibilities;

(7) to make recommendations to regroup, combine, or dissolve existing interservice agencies operating in the fields of procurement, production, and distribution in such manner as to promote efficiency and economy;

(8) to maintain liaison with other departments and agencies for the proper correlation of military requirements with the civilian economy, particularly in regard to the procurement or disposition of strategic and critical

## NATIONAL DEFENSE

material and the maintenance of adequate reserves of such material, and to make recommendations as to policies in connection therewith;

(9) to assemble and review material and personnel requirements presented by the Joint Chiefs of Staff and those presented by the production, procurement, and distribution agencies assigned to meet military needs, and to make recommendations thereon to the Secretary of Defense; and

(10) to perform such other duties as the Secretary of Defense may direct. . . .

### RESEARCH AND DEVELOPMENT BOARD

SEC. 214. (a) There is hereby established in the National Military Establishment a Research and Development Board (hereinafter in this section referred to as the "Board"). The Board shall be composed of a Chairman, who shall be the head thereof, and two representatives from each of the Departments of the Army, Navy, and Air Force, to be designated by the Secretaries of their respective Departments. The Chairman shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$14,000 a year. The purpose of the Board shall be to advise the Secretary of Defense as to the status of scientific research relative to the national security, and to assist him in assuring adequate provision for research and development on scientific problems relating to the national security.

(b) It shall be the duty of the Board, under the direction of the Secretary of Defense—

(1) to prepare a complete and integrated program of research and development for military purposes;

(2) to advise with regard to trends in scientific research relating to national security and the measures necessary to assure continued and increasing progress;

(3) to recommend measures of coordination of research

## NATIONAL DEFENSE

and development among the military departments, and allocation among them of responsibilities for specific programs of joint interest;

(4) to formulate policy for the National Military Establishment in connection with research and development matters involving agencies outside the National Military Establishment;

(5) to consider the interaction of research and development and strategy, and to advise the Joint Chiefs of Staff in connection therewith; and

(6) to perform such other duties as the Secretary of Defense may direct.

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## ATOMIC ENERGY ACT

A short passage from the Atomic Energy Act of 1946 illustrates the tremendous discretion of the President as Commander-in-Chief. It is for him alone to decide whether atomic bombs shall be produced and distributed.

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### MILITARY APPLICATIONS OF ATOMIC ENERGY

SEC. 6 (a) *Authority.* The Commission is authorized to—

(1) conduct experiments and do research and development work in the military application of atomic energy; and

(2) engage in the production of atomic bombs, atomic bomb parts, or other military weapons utilizing fissionable materials; except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United States has been obtained, which consent and direction shall be obtained at least once each year.

The President from time to time may direct the Commission (1) to deliver such quantities of fissionable materials or weapons to the armed forces for such use as he deems

## NATIONAL DEFENSE

necessary in the interest of national defense or (2) to authorize the armed forces to manufacture, produce, or acquire any equipment or device utilizing fissionable material or atomic energy as a military weapon.

(b) *Prohibition.* It shall be unlawful for any person to manufacture, produce, transfer, or acquire any equipment or device utilizing fissionable material or atomic energy as a military weapon, except as may be authorized by the Commission. . . .

## PUBLIC FINANCE

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THE basic function of all governments is the raising and spending of money. Every other activity or service—national defense, diplomacy, the administration of justice, public welfare, even the maintenance of law and order—hangs on the power of the government to tax and borrow and on the capacity of the people to pay and lend. In the United States as in all democracies, the powers of public finance are placed in the keeping of the legislature. There are no more important words in the Constitution than these: “The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States,” and “No money shall be drawn from the Treasury but in consequence of appropriations made by law.”

Congress retains final control over the public purse, but the executive shares heavily in its management. Taxes must be collected and government bonds issued, appropriations must be spent and accounts audited; all these responsibilities are carried on by the administration under the watchful eye of Congress. Since 1921 the planning of the government’s fiscal program has also been an executive function. In that year Congress finally admitted that the eighteenth century would never return and called upon the President to prepare the annual Budget.

The Budget, as any one knows who has seen a newsreel in January, is a document slightly larger than the Chicago telephone book. Whipped into shape over the previous six months

## PUBLIC FINANCE

by the Bureau of the Budget and the budget representatives of the various departments and agencies, it provides a detailed statement of planned expenditures and anticipated income for the coming year. It is the responsibility of Congress, acting primarily through the Appropriations Committees (and subcommittees) of the House and Senate, to convert the Budget into revenue and appropriations acts before the new fiscal year begins on July 1. Congress, of course, may disregard the proposals of President and Bureau. To what extent the thousands of detailed appropriations will be worked over, cut down, or even raised, depends on a variety of circumstances, principally the political complexion of executive and legislature. A vital step in the handling of the Budget is the presentation of the legislative budget provided for in the Legislative Reorganization Act of 1946 (see page 137). Generally Congress goes along pretty well with the President's proposals, for they are the joint production of the agencies, which know what they want, and the Bureau, which knows what Congress is likely to give. This modern system of fiscal planning answers the twin dictates of efficiency and democracy.

The rest is in the hands of the administration. The Bureau of the Budget exercises general supervision over the spending of each agency's allotted funds. The General Accounting Office audits the books, settles accounts, and speaks the final word on the validity of all expenditures. Last, but only last for the sake of emphasis, comes the Treasury Department. The Bureau of Internal Revenue and Customs Service collect the taxes and duties that Congress has levied, the Bureau of the Public Debt supervises borrowing operations, and the Bureau of Accounts keeps and disburses the public moneys.

The planning, appropriating, and accounting stages of public finance are illustrated by the two laws printed here. For the raising of revenue, the student is referred to those renowned documents of American government, Internal Revenue Forms W-2 and 1040.

### BUDGET AND ACCOUNTING ACT

The law establishing the Bureau of the Budget and General Accounting Office was passed in 1921, the climax of years of

## PUBLIC FINANCE

agitation for reform in the fiscal management of the federal government. It is important to note the difference in the administrative status of these two agencies. The Budget Bureau is directly under presidential supervision, while the General Accounting Office is as independent of him as an agency possibly can be.

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### TITLE II—THE BUDGET

SEC. 201. The President shall transmit to Congress on the first day of each regular session, the Budget, which shall set forth in summary and in detail:

(a) Estimates of the expenditures and appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year; except that the estimates for such year for the Legislative Branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15th of each year, and shall be included by him in the Budget without revision;

(b) His estimates of the receipts of the Government during the ensuing fiscal year, under (1) laws existing at the time the Budget is transmitted and also (2) under the revenue proposals, if any, contained in the Budget;

(c) The expenditures and receipts of the Government during the last completed fiscal year;

(d) Estimates of the expenditures and receipts of the Government during the fiscal year in progress;

(e) The amount of annual, permanent, or other appropriations, including balances of appropriations for prior fiscal years, available for expenditure during the fiscal year in progress, as of November 1 of such year;

(f) Balanced statements of (1) the condition of the Treasury at the end of the last completed fiscal year, (2) the estimated condition of the Treasury at the end of the fiscal year in progress, and (3) the estimated condition of



PUBLIC FINANCE

the Treasury at the end of the ensuing fiscal year if the financial proposals contained in the Budget are adopted;

(g) All essential facts regarding the bonded and other indebtedness of the Government; and

(h) Such other financial statements and data as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition of the Government.

SEC. 202. (a) If the estimated receipts for the ensuing fiscal year contained in the Budget, on the basis of laws existing at the time the Budget is transmitted, plus the estimated amounts in the Treasury at the close of the fiscal year in progress, available for expenditure in the ensuing fiscal year, are less than the estimated expenditures for the ensuing fiscal year contained in the Budget, the President in the Budget shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency.

(b) If the aggregate of such estimated receipts and such estimated amounts in the Treasury is greater than such estimated expenditures for the ensuing fiscal year, he shall make such recommendations as in his opinion the public interests require.

SEC. 203. (a) The President from time to time may transmit to Congress supplemental or deficiency estimates for such appropriations or expenditures as in his judgment (1) are necessary on account of laws enacted after the transmission of the Budget, or (2) are otherwise in the public interest. He shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the Budget.

(b) Whenever such supplemental or deficiency estimates reach an aggregate which, if they had been contained in the Budget, would have required the President to make a recommendation under subdivision (a) of section 202, he shall thereupon make such recommendation.

.....

## PUBLIC FINANCE

SEC. 206. No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request, and no recommendation as to how the revenue needs of the Government should be met, shall be submitted to Congress or any committee thereof by any officer or employee of any department or establishment, unless at the request of either House of Congress.

SEC. 207. There is hereby created in the Treasury Department<sup>1</sup> a Bureau to be known as the Bureau of the Budget. There shall be in the Bureau a Director and an Assistant Director, who shall be appointed by the President . . . The Assistant Director shall perform such duties as the Director may designate, and during the absence or incapacity of the Director or during a vacancy in the office of Director he shall act as Director. The Bureau, under such rules and regulations as the President may prescribe, shall prepare for him the Budget . . . and any supplemental or deficiency estimates, and to this end shall have authority to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments.

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SEC. 209. The Bureau, when directed by the President, shall make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes (with a view of securing greater economy and efficiency in the conduct of the public service) should be made in (1) the existing organization, activities, and methods of business of such departments or establishments, (2) the appropriations therefor, (3) the assignment of particular activities to particular services, or (4) the regrouping of services. The results of such study shall be embodied in a report or reports to the President, who may transmit to Congress such report or reports or

<sup>1</sup> The Bureau of the Budget was transferred to the Executive Office of the President by Reorganization Plan No. 1 of 1939.

## PUBLIC FINANCE

any part thereof with his recommendations on the matters covered thereby.

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SEC. 212. The Bureau shall, at the request of any committee of either House of Congress having jurisdiction over revenue or appropriations, furnish the committee such aid and information as it may request.

SEC. 213. Under such regulations as the President may prescribe, (1) every department and establishment shall furnish to the Bureau such information as the Bureau may from time to time require, and (2) the Director and the Assistant Director, or any employee of the Bureau when duly authorized, shall, for the purpose of securing such information, have access to, and the right to examine, any books, documents, papers, or records of any such department or establishment.

SEC. 214. (a) The head of each department and establishment shall designate an official thereof as budget officer therefor, who, in each year under his direction and on or before a date fixed by him, shall prepare the departmental estimates.

(b) Such budget officer shall also prepare, under the direction of the head of the department or establishment, such supplemental and deficiency estimates as may be required for its work.

SEC. 215. The head of each department and establishment shall revise the departmental estimates and submit them to the Bureau on or before September 15 of each year. In case of his failure so to do, the President shall cause to be prepared such estimates and data as are necessary to enable him to include in the Budget estimates and statements in respect to the work of such department or establishment.

SEC. 216. The departmental estimates and any supplemental or deficiency estimates submitted to the Bureau

by the head of any department or establishment shall be prepared and submitted in such form, manner, and detail as the President may prescribe.

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### TITLE III—GENERAL ACCOUNTING OFFICE

SEC. 301. There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States. . . .

SEC. 302. There shall be in the General Accounting Office a Comptroller General of the United States and an Assistant Comptroller General of the United States, who shall be appointed by the President with the advice and consent of the Senate. . . . The Assistant Comptroller General shall perform such duties as may be assigned to him by the Comptroller General, and during the absence or incapacity of the Comptroller General, or during a vacancy in that office, shall act as Comptroller General.

SEC. 303. Except as hereinafter provided in this section, the Comptroller General and the Assistant Comptroller General shall hold office for fifteen years. The Comptroller General shall not be eligible for reappointment. The Comptroller General or the Assistant Comptroller General may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the Comptroller General or Assistant Comptroller General has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any Comptroller General or Assistant Comptroller General removed in the manner herein provided shall be ineligible for reappointment to that office. When a Comptroller General or Assistant Comp-

PUBLIC FINANCE

troller General attains the age of seventy years, he shall be retired from his office.

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SEC. 305. Section 236 of the Revised Statutes is amended to read as follows:

"SEC. 236. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

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SEC. 309. The Comptroller General shall prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States.

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SEC. 312. (a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as

## PUBLIC FINANCE

shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget as it may request from time to time.

SEC. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment.

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### INDEPENDENT OFFICES APPROPRIATION ACT, 1949

Here are excerpts from one of the two dozen appropriations acts passed by the 1948 Congress for the fiscal year July 1, 1948-June 30, 1949. They provide a typical example of the manner in which Congress appropriates money and sets limits to its expenditure.

## PUBLIC FINANCE

The following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1949, namely:

### TITLE I

#### EXECUTIVE OFFICE OF THE PRESIDENT

##### *Compensation of the President*

For compensation of the President of the United States, \$75,000.

##### *The White House Office*

SALARIES AND EXPENSES. For expenses necessary for The White House Office, including compensation of the Secretary to the President, the two additional secretaries to the President and the six administrative assistants to the President at \$10,000 each, and other personal services in the District of Columbia; not to exceed \$3,000 for deposit in the Treasury for penalty mail (39 U.S.C. 321d); automobiles; printing and binding; services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates for individuals not in excess of \$35 per diem (unless a higher rate, not exceeding \$50, shall be approved by the Director of the Bureau of the Budget); and travel and official entertainment expenses of the President, to be accounted for on his certificate solely; \$969,612: *Provided*, That employees of the departments and independent offices of the executive branch of the Government may be detailed from time to time to The White House Office for temporary assistance.

For additional personal services, for The White House Office to meet emergencies that may arise, without regard to the provisions of law regulating the employment and compensation of persons in the Government service, \$200,000.

## PUBLIC FINANCE

### *Emergency Fund for the President*

To provide for emergencies affecting the national interest or security, as the President may specify, without regard to such provisions of law regulating the expenditure of Government funds, \$200,000: *Provided*, That no part of such fund shall be available for allocation to finance a function or project for which function or project a budget estimate of appropriation was transmitted pursuant to law during the Eightieth Congress or the first session of the Eighty-first Congress and such appropriation denied after consideration thereof by the Senate or House of Representatives or by the Committee on Appropriations of either body.

### *Executive Mansion and Grounds*

For the care, maintenance, repair and alteration, refurnishing, improvement, heating and lighting, including electric power and fixtures, of the Executive Mansion, grounds, and traveling expenses, to be expended as the President may determine, notwithstanding the provisions of any other Act, \$230,700.

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## INDEPENDENT OFFICES

### *Interstate Commerce Commission*

GENERAL EXPENSES. For expenses necessary in performing the functions vested by law in the Commission (49 U. S. C. 1-24, 301-327, 901-923, 1001-1022), except those otherwise specifically provided for in this Act, and for general administration, including one chief counsel, one director of finance, one director of motor transport, and one director of traffic, at \$10,000 each per annum; not to exceed \$50,000 for the employment of special counsel; contract stenographic reporting services; personal services in the District of Columbia; newspapers (not to exceed \$200); health service program as authorized by law (5 U. S. C.



150); payment of claims pursuant to section 403 of the Federal Tort Claims Act (28 U. S. C. 921); and purchase of thirty-two passenger automobiles, of which sixteen shall be for replacement only; \$9,131,317: *Provided*, That Joint Board members and cooperating State commissioners may use Government transportation requests when traveling in connection with their duties as such: *Provided further*, That not to exceed \$5,000 may be used for the purchase of evidence in connection with investigations of apparent violations of part II of the Interstate Commerce Act.

RAILROAD SAFETY. For expenses necessary in performing functions authorized by law (45 U. S. C. 1-15, 17-21, 35-46, 61-64; 49 U. S. C. 26) to insure a maximum of safety in the operation of railroads, including authority to investigate, test experimentally, and report on the use and need of any appliances or systems intended to promote the safety of railway operation, including those pertaining to block-signal and train-control systems, as authorized by the joint resolution approved June 30, 1906, and the Sundry Civil Act of May 27, 1908 (45 U. S. C. 35-37), and to require carriers by railroad subject to the Act to install automatic train-stop or train-control devices as prescribed by the Commission (49 U. S. C. 26), including the employment of inspectors, engineers, and personal services in the District of Columbia, \$908,000.

LOCOMOTIVE INSPECTION. For expenses necessary in the enforcement of the Act of February 17, 1911, entitled "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto," as amended (45 U. S. C. 22-34), including personal services in the District of Columbia, \$615,000.

PRINTING AND BINDING. For all printing and binding for the Interstate Commerce Commission, including not to exceed \$17,000 to print and furnish to the States, at cost,

## PUBLIC FINANCE

blank annual report forms of common carriers, \$205,000.

PENALTY MAIL COSTS. For deposit in the Treasury for penalty mail of the Interstate Commerce Commission (39 U. S. C. 321d), \$35,000.

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### *Smithsonian Institution*

SALARIES AND EXPENSES, SMITHSONIAN INSTITUTION. For all necessary expenses for the preservation, exhibition, and increase of collections from the surveying and exploring expeditions of the Government and from other sources; for the system of international exchanges between the United States and foreign countries; for anthropological researches among the American Indians and the natives of Hawaii and the excavation and preservation of archeological remains; for maintenance of the Astrophysical Observatory and making necessary observations in high altitudes; for the administration of the National Collection of Fine Arts; for the administration, and for the construction and maintenance, of laboratory and other facilities on Barro Colorado Island, Canal Zone, under the provisions of the Act of July 2, 1940, as amended by the provisions of Reorganization Plan Numbered 3 of 1946; for the maintenance and administration of a national air museum as authorized by the Act of August 12, 1946 (20 U. S. C. 921); including personal services in the District of Columbia and not to exceed \$35,000 for temporary services as authorized by section 15 of the Act of August 2, 1946 (5 U. S. C. 55a); traveling expenses; not to exceed \$2,600 for deposit in the Treasury for penalty mail (39 U. S. C. 321d); payment of claims pursuant to section 403 of the Federal Tort Claims Act (28 U. S. C. 921); printing and binding, not exceeding \$150,000, of which not to exceed \$16,800 shall be available for printing the report of the American Historical Association; purchase, repair, and cleaning of uniforms for guards and elevator con-

## PUBLIC FINANCE

ductors; repairs and alterations of buildings and approaches; and not exceeding \$5,500 for preparation of manuscripts, drawings, and illustrations for publications; \$2,090,000.

### *National Gallery of Art*

SALARIES AND EXPENSES, NATIONAL GALLERY OF ART. For the upkeep and operation of the National Gallery of Art, the protection and care of the works of art therein, and administrative expenses incident thereto, as authorized by the Act of March 24, 1937 (50 Stat. 51), as amended by the public resolution of April 13, 1939 (Public Resolution 9, Seventy-sixth Congress), including personal services in the District of Columbia; health-service program as authorized by law (5 U. S. C. 150); payment of claims pursuant to section 403 of the Federal Tort Claims Act (28 U. S. C. 921); services as authorized by section 15 of the Act of August 2, 1946 (5 U. S. C. 55a); traveling expenses; not to exceed \$1,600 for deposit in the Treasury for penalty mail (39 U. S. C. 321d); not to exceed \$250 for payment in advance when authorized by the treasurer of the Gallery for membership in library, museum, and art associations or societies whose publications or services are available to members only, or to members at a price lower than to the general public; purchase, repair, and cleaning of uniforms for guards and elevator operators; not to exceed \$7,000 for printing and binding; purchase or rental of devices and services for protecting buildings and contents thereof; and maintenance and repair of buildings, approaches, and grounds; \$966,000: *Provided*, That section 3709 of the Revised Statutes, or the Classification Act of 1923, as amended, shall not apply to the restoration and repair of works of art for the National Gallery of Art, the cost of which shall not exceed \$15,000.

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PUBLIC FINANCE

*Independent Offices—General Provisions*

SEC. 102. No part of any appropriation contained in this Act shall be used to pay the salary or wages of any person who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence. . . .

TITLE II—GENERAL PROVISIONS

SEC. 201. Unless otherwise specifically provided, the maximum amount allowable, in accordance with section 16 of the Act of August 2, 1946 (Public Law 600), for the purchase of any passenger motor vehicle (exclusive of busses, ambulances, and station wagons), is hereby fixed at \$1,400.

SEC. 202. Unless otherwise specified and until July 1, 1949, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States on the date of enactment of this Act who, being eligible for citizenship, had filed a declaration of intention to become a citizen of the United States prior to such date, or (3) is a person who owes allegiance to the United States. . . . This section shall not apply to citizens of the Republic of the Philippines or to nationals of those countries allied with the United States in the prosecution of the war.

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## THE GENERAL WELFARE

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ONE of the six announced reasons for establishing the Constitution was "to promote the general welfare." In 1787 and throughout most of our history this phrase was given a restrictive interpretation. In the hands of the states, to solve or ignore as they saw fit, were left the problems of public welfare. Except for education they were generally ignored. Today, thanks to the Great Depression, the New Deal, and a pronounced shift in our thinking about the nature and purposes of government, the promotion of the general welfare is a major concern of the federal government. The broad sweep of this concern is apparent in a listing of its welfare activities. Two facts should be noted about most of these programs: they are based on the delegated power of Congress to tax and spend for the general welfare, and they are *federal* rather than national undertakings since they are carried on through the close cooperation of nation and states.

*Social Security.* A vast cooperative program of old-age assistance, old-age and survivors insurance, unemployment compensation, aid to dependent children, maternal and child welfare, and aid to the needy blind is administered by the Social Security Administration in the Federal Security Agency. The Social Security Act of 1935, which inaugurated this scheme of public welfare, is far too long and complicated to be printed here, but a typical excerpt may be found on page 34.

*Education.* This area remains primarily a state and local responsibility. The national government confines itself to running the service and District of Columbia Schools, maintaining

## THE GENERAL WELFARE

the fact-gathering and advisory Office of Education, and stimulating (usually by the dollar-for-dollar method) certain specialized educational programs, particularly in the field of agriculture. In addition, the nation's colleges have benefited immeasurably from the government's war training and veterans education programs.

*Public Health.* Here, too, the primary responsibility rests with the states and localities. Public health, however, is an area the states are not so quick and able to guard as education, and the activities of the national government are becoming increasingly important. The Public Health Service, an arm of the Federal Security Agency, carries on a major program of medical research, quarantine and prevention, health education, and general cooperation with the states in all matters of public health.

*Housing.* The government's activities in this field reached their highest point during the depression of the 1930's and the second World War. The present half-hearted federal aids to public and private housing are the responsibility of several branches of the Housing and Home Finance Agency.

*Veterans Benefits.* The Servicemen's Readjustment Act of 1944 inaugurated a vast welfare program for the veterans of the late conflict. The "G.I. Bill of Rights" provides funds for formal education, on-the-job training, and unemployment benefits in the transitional period; guarantees loans for the purchase of farms, homes, and businesses; and establishes an employment service.

The whole range of national welfare activities is now in a period of transition. There is strong pressure for all-out national action—direct aid to education at all levels, public housing on a vast scale, expansion and nationalization of social security, and a comprehensive scheme of public health. There is equally strong pressure to force the government to halt where it now stands, even to retreat. Even if it halts for a few years, it will move on again. The trend toward the service state seems irresistible.

## MORRILL ACT OF 1862

This great law was a major national contribution to the advancement of American education. The pattern of the "land-

## THE GENERAL WELFARE

grant colleges" that it established forms a vital part of our educational system.

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*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be granted to the several States, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each State a quantity equal to thirty thousand acres for each senator and representative in Congress to which the States are respectively entitled by the apportionment under the census of eighteen hundred and sixty: *Provided,* That no mineral lands shall be selected or purchased under the provisions of this act.

SEC. 2. *And be it further enacted,* That the land aforesaid, after being surveyed, shall be apportioned to the several States in sections or subdivisions of sections, not less than one quarter of a section; and whenever there are public lands in a State subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said State shall be entitled shall be selected from such lands within the limits of such State, and the Secretary of the Interior is hereby directed to issue to each of the States in which there is not the quantity of public lands subject to sale at private entry at one dollar and twenty-five cents per acre, to which said State may be entitled under the provisions of this act, land scrip to the amount in acres for the deficiency of its distributive share: said scrip to be sold by said States and the proceeds thereof applied to the uses and purposes prescribed in this act, and for no other use or purpose whatsoever.

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SEC. 4. *And be it further enacted,* That all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sales of land scrip hereinbefore provided for, shall be invested in

## THE GENERAL WELFARE

stocks of the United States, or of the States, or some other safe stocks, yielding not less than five per centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, (except so far as may be provided in section fifth of this act,) and the interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

SEC. 5. *And be it further enacted*, That the grant of land and land scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several States shall be signified by legislative acts:

*First.* If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall, by any actions or contingency, be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital of the fund shall remain forever undiminished. . . .

*Second.* No portion of said fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretence whatever, to the purchase, erection, preservation, or repair of any building or buildings.

*Third.* Any State which may take and claim the benefit of the provisions of this act shall provide, within five years, at least not less than one college, as described in the fourth section of this act, or the grant to such State shall cease; and



## THE GENERAL WELFARE

said State shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the State shall be valid.

*Fourth.* An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their cost and results, and such other matters, including State industrial and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail free, by each, to all the other colleges which may be endowed under the provisions of this act, and also one copy to the Secretary of the Interior.

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*Sixth.* No State while in a condition of rebellion or insurrection against the government of the United States shall be entitled to the benefit of this act. . . .

## PUBLIC HEALTH SERVICE ACT

Like the Morrill Act, this law of 1944 was the product of a wartime Congress. It reorganized and strengthened the Public Health Service and laid a firm foundation for a national public health program. The work of the Public Health Service was extended into two other important areas of national health by laws of 1946, the National Mental Health Act and Hospital Survey and Construction Act.

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## TITLE II—ADMINISTRATION

### PUBLIC HEALTH SERVICE

SEC. 201. The Public Health Service in the Federal Security Agency shall be administered by the Surgeon General under the supervision and direction of the Administrator.

### ORGANIZATION

SEC. 202. The Service shall consist of (1) the Office of the Surgeon General, (2) the National Institute of Health, (3) the Bureau of Medical Services, and (4) the Bureau of State Services. . . .

## THE GENERAL WELFARE

### COMMISSIONED CORPS

SEC. 203. There shall be in the Service a commissioned Regular Corps and, for the purpose of securing a reserve for duty in the Service in time of national emergency, a Reserve Corps. . . .

### SURGEON GENERAL

SEC. 204. The Surgeon General shall be appointed from the Regular Corps for a four-year term by the President by and with the advice and consent of the Senate. . . .

### DEPUTY SURGEON GENERAL AND ASSISTANT SURGEONS GENERAL

SEC. 205. (a) The Surgeon General shall assign one commissioned officer from the Regular Corps to administer the Office of the Surgeon General, to act as Surgeon General during the absence or disability of the Surgeon General or in the event of a vacancy in that office, and to perform such other duties as the Surgeon General may prescribe, and while so assigned he shall have the title of Deputy Surgeon General.

(b) The Surgeon General shall assign six commissioned officers from the Regular Corps to be, respectively, the Director of the National Institute of Health, the Chief of the Bureau of State Services, the Chief of the Bureau of Medical Services, the Chief Medical Officer of the United States Coast Guard, the Chief Dental Officer of the Service, and the Chief Sanitary Engineering Officer of the Service, and while so serving they shall each have the title of Assistant Surgeon General.

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### USE OF SERVICE IN EMERGENCY

SEC. 216. In time of war, or of emergency proclaimed by the President, he may utilize the Service to such extent and in such manner as shall in his judgment promote the public interest, and in time of war he may by Executive order

## THE GENERAL WELFARE

declare the commissioned corps of the Service to be a military service. . . .

### NATIONAL ADVISORY HEALTH AND CANCER COUNCILS

SEC. 217 (a) The National Advisory Health Council shall consist of fourteen members. The Director of the National Institute of Health, and three experts, one each from the Army, the Navy, and the Bureau of Animal Industry, to be detailed by the Secretary of War, the Secretary of the Navy, and the Secretary of Agriculture, respectively, shall be ex officio members of the Council. The Surgeon General, with the approval of the Administrator, shall appoint, without regard to the civil-service laws, ten members of the Council who shall be persons, not otherwise in the employ of the United States, skilled in the sciences related to health. Each appointed member shall hold office for a term of five years. . . .

(b) The National Advisory Health Council shall advise, consult with, and make recommendations to, the Surgeon General on matters relating to health activities and functions of the Service. . . .

(c) The National Advisory Cancer Council shall consist of the Surgeon General ex officio, who shall be Chairman, and of six members to be appointed without regard to the civil-service laws by the Surgeon General with the approval of the Administrator. The six appointed members shall be selected from leading medical or scientific authorities who are outstanding in the study, diagnosis, or treatment of cancer. . . .

## TITLE III—GENERAL POWERS AND DUTIES OF PUBLIC HEALTH SERVICE

### PART A—RESEARCH AND INVESTIGATIONS IN GENERAL

SEC. 301. The Surgeon General shall conduct in the Service, and encourage, cooperate with, and render assist-

## THE GENERAL WELFARE

ance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams. In carrying out the foregoing the Surgeon General is authorized to—

(a) Collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

(b) Make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(c) Establish and maintain research fellowships in the Service with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most brilliant and promising research fellows from the United States and abroad;

(d) Make grants in aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the National Advisory Health Council, or, with respect to cancer, recommended by the National Advisory Cancer Council;

(e) Secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(f) For purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment; and

(g) Adopt, upon recommendation of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Advisory Cancer Council,

## THE GENERAL WELFARE

such additional means as he deems necessary or appropriate to carry out the purposes of this section.

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### PART B—FEDERAL-STATE COOPERATION

#### IN GENERAL

SEC. 311. The Surgeon General is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this Act which such authorities may be able and willing to provide. The Surgeon General shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations . . . and shall advise the several States on matters relating to the preservation and improvement of the public health.

#### HEALTH CONFERENCES

SEC. 312. A conference of the health authorities of the several States shall be called annually by the Surgeon General. Whenever in his opinion the interests of the public health would be promoted by a conference, the Surgeon General may invite as many of such health authorities to confer as he deems necessary or proper. Upon the application of health authorities of five or more States it shall be the duty of the Surgeon General to call a conference of all State and Territorial health authorities joining in the request. Each State represented at any conference shall be entitled to a single vote.

#### COLLECTION OF VITAL STATISTICS

SEC. 313. To secure uniformity in the registration of mortality, morbidity, and vital statistics the Surgeon General shall prepare and distribute suitable and necessary forms for the collection and compilation of such statistics

## THE GENERAL WELFARE

which shall be published as a part of the health reports published by the Surgeon General.

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### HEALTH EDUCATION AND INFORMATION

SEC. 315. From time to time the Surgeon General shall issue information related to public health, in the form of publications or otherwise, for the use of the public, and shall publish weekly reports of health conditions in the United States and other countries and other pertinent health information for the use of persons and institutions engaged in work related to the functions of the Service.

### PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

#### HOSPITALS

SEC. 321. The Surgeon General, pursuant to regulations, shall—

(a) Control, manage, and operate all institutions, hospitals, and stations of the Service, and provide for the care, treatment and hospitalization of patients, including the furnishing of prosthetic and orthopedic devices; and from time to time, with the approval of the President, select suitable sites for and establish such additional institutions, hospitals, and stations in the States and possessions of the United States as in his judgment are necessary to enable the Service to discharge its functions and duties.

.....

#### EXAMINATION OF ALIENS

SEC. 325. The Surgeon General shall provide for making, at places within the United States or in other countries, such physical and mental examinations of aliens as are required by the immigration laws, subject to administrative regulations prescribed by the Attorney General

## THE GENERAL WELFARE

and medical regulations prescribed by the Surgeon General with the approval of the Administrator.

### SERVICES TO COAST GUARD, COAST AND GEODETIC SURVEY, AND PUBLIC HEALTH SERVICE

SEC. 326. (a) Subject to regulations of the President—

(1) commissioned officers, chief warrant officers, warrant officers, cadets, and enlisted personnel of the Regular Coast Guard, including those on shore duty and those on detached duty, whether on active duty or retired; and Regular and temporary members of the United States Coast Guard Reserve when on active duty or when retired for disability;

(2) commissioned officers, ships' officers, and members of the crews of vessels of the United States Coast and Geodetic Survey, including those on shore duty and those on detached duty, whether on active duty or retired; and

(3) commissioned officers of the Regular Corps of the Public Health Service, whether on active duty or retired, and commissioned officers of the Reserve Corps when on active duty or when retired for disability;

shall be entitled to medical, surgical, and dental treatment and hospitalization by the Service. The Surgeon General may detail commissioned officers for duty aboard vessels of the Coast Guard or the Coast and Geodetic Survey.

.....

### PART D—LEPERS

#### RECEIPT OF LEPERS

SEC. 331. The Service shall, in accordance with regulations, receive into any hospital of the Service suitable for his accommodation any person afflicted with leprosy who presents himself for care, detention, or treatment . . . and any person afflicted with leprosy duly consigned to the care of the Service by the proper health authority of any State, Territory, or the District of Columbia. The Sur-

## THE GENERAL WELFARE

geon General is authorized, upon the request of any health authority, to send for any person within the jurisdiction of such authority who is afflicted with leprosy and to convey such person to the appropriate hospital for detention and treatment. . . .

### PART E—NARCOTICS ADDICTS

#### CARE AND TREATMENT

SEC. 341. The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-forming narcotic drugs who voluntarily submit themselves for treatment and addicts who have been or are hereafter convicted of offenses against the United States, including persons convicted by general courts martial and consular courts. Such care and treatment shall be provided at hospitals of the Service especially equipped for the accommodation of such patients and shall be designed to rehabilitate such persons, to restore them to health, and, where necessary, to train them to be self-supporting and self-reliant.

.....

### PART G—QUARANTINE AND INSPECTION

#### CONTROL OF COMMUNICABLE DISEASES

SEC. 361. (a) The Surgeon General, with the approval of the Administrator, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. . . .

.....

#### QUARANTINE STATIONS

SEC. 364. (a) Except as provided in title II of the Act of June 15, 1917, as amended (U. S. C., 1940 edition, title 50,



## THE GENERAL WELFARE

secs. 191–194), the Surgeon General shall control, direct, and manage all United States quarantine stations, grounds, and anchorages, designate their boundaries, and designate the quarantine officers to be in charge thereof. With the approval of the President he shall from time to time select suitable sites for and establish such additional stations, grounds, and anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States.

.....

### TITLE IV—NATIONAL CANCER INSTITUTE

#### TO BE A DIVISION IN NATIONAL INSTITUTE OF HEALTH

SEC. 401. The National Cancer Institute shall be a division in the National Institute of Health.

#### CANCER RESEARCH, AND SO FORTH

SEC. 402. In carrying out the purposes of section 301 with respect to cancer the Surgeon General, through the National Cancer Institute and in cooperation with the National Cancer Advisory Council, shall—

(a) conduct, assist, and foster researches, investigations, experiments, and studies relating to the cause, prevention, and methods of diagnosis and treatment of cancer;

(b) promote the coordination of researches conducted by the Institute and similar researches conducted by other agencies, organizations, and individuals;

(c) provide training and instruction in technical matters relating to the diagnosis and treatment of cancer;

(d) provide fellowships in the Institute from funds appropriated or donated for such purpose;

(e) secure for the Institute consultation services and advice of cancer experts from the United States and abroad;

(f) cooperate with State health agencies in the prevention, control, and eradication of cancer;

(g) procure, use, and lend radium. . . .

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## CONSERVATION

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THE primary responsibility for the conservation of the nation's rich endowment of natural resources rests with the national government. The outlook of the state governments is too parochial, that of private business too immediate. The national government alone is in a position to keep a long-range, all-seeing watch over our natural inheritance—lands, minerals, forests, lakes and streams, and wildlife. Although the authority to conserve these resources is not specifically granted in the Constitution, the powers of Congress to regulate commerce, spend money for the general welfare, implement treaties, and “dispose of and make all needful rules and regulations respecting territory or other property belonging to the United States” can justify any amount of conservation the American people are willing to underwrite.

The conservation activities of the federal government are carried on by a number of agencies, of which the most prominent is the Department of the Interior. A partial listing of the units in this department outlines the extent of our problems: Bureau of Land Management, Geological Survey, Bureau of Reclamation, National Park Service, Bureau of Mines, Fish and Wildlife Service, and Oil and Gas Division. The Department of Agriculture is likewise engaged in conservation, particularly through the Forest Service, Soil Conservation Service, and its various research programs. The Federal Power Commission and the Army, with its unceasing work in flood control and river and harbor development, make their contributions, too. The need for a more unified program of conservation is becoming increasingly insistent, and it has been strongly urged that the Department of the Interior be converted into a com-

## CONSERVATION

prehensive Department of Conservation. Unfortunately, the preservation, development, utilization, and, wherever possible, restoration of our natural resources demand planning, and planning is still one of the reddest herrings of American politics.

A new approach to the problem of over-all conservation is illustrated by the document selected for this chapter. The Tennessee Valley Authority, at once the most farsighted and controversial of the New Deal undertakings, is a government-owned corporation devoted to the general improvement of the area (comprising 41,000 square miles and parts of seven states) through which the Tennessee River flows. The establishment of this type of agency in this particular region was both fortuitous and designed. At the end of World War I the government was left with the famous Muscle Shoals Development, originally constructed for the extraction of nitrate for explosives from air. This property, which included Wilson Dam and two nitrate plants, was the subject of much controversy throughout the 1920's. Senator George W. Norris of Nebraska took the lead in urging that it be put to work for the development of power and manufacture of fertilizers; the grand plan of the New Deal for an experiment in regional development was built upon that foundation.

The TVA is presently engaged in a comprehensive, regional program of navigation improvement, flood control, reforestation, land restoration, power production, agricultural and industrial development and research, and general service to the national defense. Most of the people of the Valley, it should be noted, regard the TVA as a definite success. Whether it is destined to be the forerunner of a revolutionary approach to total conservation, whether an MVA and CVA and RRVA will follow, remains to be seen. Whatever else may be claimed for TVA, it has been a tremendous force for intelligent conservation.

### TENNESSEE VALLEY AUTHORITY ACT

This statute was enacted May 18, 1933. Later amendments and additions are enclosed in brackets, sections 4(j), 5(c), 9(a), 26, and 26a from a law of 1935; section 13 from a law of 1940.

## CONSERVATION

For the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to improve navigation in the Tennessee River and to control the destructive flood waters in the Tennessee River and Mississippi River Basins, there is hereby created a body corporate by the name of the "Tennessee Valley Authority" (hereinafter referred to as the "Corporation"). . . .

SEC. 2. (a) The board of directors of the Corporation (hereinafter referred to as the "board") shall be composed of three members, to be appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the board, the President shall designate the chairman. All other officials, agents, and employees shall be designated and selected by the board.

(b) The terms of office of the members first taking office after the approval of this Act shall expire as designated by the President at the time of nomination, one at the end of the third year, one at the end of the sixth year, and one at the end of the ninth year, after the date of approval of this Act. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring nine years from the date of the expiration of the term for which his predecessor was appointed.

.....

(e) Each of the members of the board shall be a citizen of the United States, and shall receive a salary at the rate of \$10,000 a year, to be paid by the Corporation as current expenses. . . . No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the Corporation.

## CONSERVATION

(f) No director shall have financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribution of fixed nitrogen or fertilizer, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Corporation as a producer of concentrated fertilizers or as a producer of electric power.

(g) The board shall direct the exercise of all the powers of the Corporation.

(h) All members of the board shall be persons who profess a belief in the feasibility and wisdom of this Act.

SEC. 3. The board shall without regard to the provisions of Civil Service laws applicable to officers and employees of the United States, appoint such managers, assistant managers, officers, employees, attorneys, and agents, as are necessary for the transaction of its business, fix their compensation, define their duties, require bonds of such of them as the board may designate, and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed in the discretion of the board. . . .

SEC. 4. Except as otherwise specifically provided in this Act, the Corporation—

- (a) Shall have succession in its corporate name.
- (b) May sue and be sued in its corporate name.
- (c) May adopt and use a corporate seal, which shall be judicially noticed.
- (d) May make contracts, as herein authorized.
- (e) May adopt, amend, and repeal bylaws.
- (f) May purchase or lease and hold such real and personal property as it deems necessary or convenient in the transaction of its business, and may dispose of any such personal property held by it.

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The board shall select a treasurer and as many assistant treasurers as it deems proper, which treasurer and assistant treasurers shall give such bonds for the safe-keeping of the securities and moneys of the said Corporation as the board may require: *Provided*, That any member of said board may be removed from office at any time by a concurrent resolution of the Senate and the House of Representatives.

(g) Shall have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation.

(h) Shall have power in the name of the United States of America to exercise the right of eminent domain, and in the purchase of any real estate or the acquisition of real estate by condemnation proceedings, the title to such real estate shall be taken in the name of the United States of America, and thereupon all such real estate shall be entrusted to the Corporation as the agent of the United States to accomplish the purposes of this Act.

(i) Shall have power to acquire real estate for the construction of dams, reservoirs, transmission lines, power houses, and other structures, and navigation projects at any point along the Tennessee River, or any of its tributaries, and in the event that the owner or owners of such property shall fail and refuse to sell to the Corporation at a price deemed fair and reasonable by the board, then the Corporation may proceed to exercise the right of eminent domain, and to condemn all property that it deems necessary for carrying out the purposes of this Act, and all such condemnation proceedings shall be had pursuant to the provisions and requirements hereinafter specified, with reference to any and all condemnation proceedings.

[(j) Shall have power to construct such dams, and reservoirs, in the Tennessee River and its tributaries, as in conjunction with Wilson Dam, and Norris, Wheeler, and Pickwick Landing Dams, now under construction,

## CONSERVATION

will provide a nine-foot channel in the said river and maintain a water supply for the same, from Knoxville to its mouth, and will best serve to promote navigation on the Tennessee River and its tributaries and control destructive flood waters in the Tennessee and Mississippi River drainage basins; and shall have power to acquire or construct power houses, power structures, transmission lines, navigation projects, and incidental works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines. . . . ]

.....

SEC. 5. The board is hereby authorized—

(a) To contract with commercial producers for the production of such fertilizers or fertilizer materials as may be needed in the Government's program of development and introduction in excess of that produced by Government plants. Such contracts may provide either for outright purchase of materials by the board or only for the payment of carrying charges on special materials manufactured at the board's request for its program.

(b) To arrange with farmers and farm organizations for large-scale practical use of the new forms of fertilizers under conditions permitting an accurate measure of the economic return they produce.

[(c) To cooperate with National, State, district, or county experimental stations or demonstration farms, with farmers, landowners, and associations of farmers or landowners, for the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction, and for promoting the prevention of soil erosion by the use of fertilizers and otherwise.]

(d) The board in order to improve and cheapen the production of fertilizer is authorized to manufacture and sell fixed nitrogen, fertilizer, and fertilizer ingredients at

## CONSERVATION

Muscle Shoals by the employment of existing facilities, by modernizing existing plants, or by any other process or processes that in its judgment shall appear wise and profitable for the fixation of atmospheric nitrogen or the cheapening of the production of fertilizer.

(e) Under the authority of this Act the board may make donations or sales of the product of the plant or plants operated by it to be fairly and equitably distributed through the agency of county demonstration agents, agricultural colleges, or otherwise as the board may direct, for experimentation, education, and introduction of the use of such products in cooperation with practical farmers so as to obtain information as to the value, effect, and best methods of their use.

(f) The board is authorized to make alterations, modifications, or improvements in existing plants and facilities, and to construct new plants.

.....

(h) To establish, maintain, and operate laboratories and experimental plants, and to undertake experiments for the purpose of enabling the Corporation to furnish nitrogen products for military purposes, and nitrogen and other fertilizer products for agricultural purposes in the most economical manner and at the highest standard of efficiency.

(i) To request the assistance and advice of any officer, agent, or employee of any executive department or of any independent office of the United States, to enable the Corporation the better to carry out its powers successfully, and as far as practicable shall utilize the services of such officers, agents, and employees, and the President shall, if in his opinion, the public interest, service, or economy so require, direct that such assistance, advice, and service be rendered to the Corporation, and any individual that may be by the President directed to render such assistance,



## CONSERVATION

advice, and service shall be thereafter subject to the orders, rules, and regulations of the board. . . .

(j) Upon the requisition of the Secretary of War or the Secretary of the Navy to manufacture for and sell at cost to the United States explosives or their nitrogenous content.

(k) Upon the requisition of the Secretary of War the Corporation shall allot and deliver without charge to the War Department so much power as shall be necessary in the judgment of said Department for use in operation of all locks, lifts, or other facilities in aid of navigation.

(l) To produce, distribute, and sell electric power, as herein particularly specified.

.....

SEC. 6. In the appointment of officials and the selection of employees for said Corporation, and in the promotion of any such employees or officials, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. Any member of said board who is found by the President of the United States to be guilty of a violation of this section shall be removed from office by the President of the United States, and any appointee of said board who is found by the board to be guilty of a violation of this section shall be removed from office by said board.

SEC. 7. In order to enable the Corporation to exercise the powers and duties vested in it by this Act—

(a) The exclusive use, possession, and control of the United States nitrate plants numbered 1 and 2, including steam plants, located, respectively, at Sheffield, Alabama, and Muscle Shoals, Alabama, together with all real estate and buildings connected therewith, all tools and machinery, equipment, accessories, and materials belonging thereto, and all laboratories and plants used as auxiliaries thereto; the fixed-nitrogen research laboratory,

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the Waco limestone quarry, in Alabama, and Dam Numbered 2, located at Muscle Shoals, its power house, and all hydroelectric and operating appurtenances (except the locks), and all machinery, lands, and buildings in connection therewith, and all appurtenances thereof, and all other property to be acquired by the Corporation in its own name or in the name of the United States of America, are hereby intrusted to the Corporation for the purposes of this Act.

(b) The President of the United States is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real or personal property of the United States as he may from time to time deem necessary and proper for the purposes of the Corporation as herein stated.

SEC. 8. (a) The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

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SEC. 9. (a) The board shall file with the President and with the Congress, in December of each year, a financial statement and a complete report as to the business of the Corporation covering the preceding governmental fiscal year.

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[SEC. 9a. The Board is hereby directed in the operation of any dam or reservoir in its possession and control to regulate the stream flow primarily for the purposes of promoting navigation and controlling floods. So far as may be consistent with such purposes, the Board is authorized to provide and operate facilities for the generation of electric energy at any such dam for the use of the

## CONSERVATION

Corporation and for the use of the United States or any agency thereof, and the Board is further authorized, whenever an opportunity is afforded, to provide and operate facilities for the generation of electric energy in order to avoid the waste of water power, to transmit and market such power as in this act provided, and thereby, so far as may be practicable, to assist in liquidating the cost or aid in the maintenance of the projects of the Authority.]

SEC. 10. The board is hereby empowered and authorized to sell the surplus power not used in its operations, and for operation of locks and other works generated by it, to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set forth; and to carry out said authority, the board is authorized to enter into contracts for such sale for a term not exceeding twenty years, and in the sale of such current by the board it shall give preference to States, counties, municipalities, and cooperative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members. . . . In order to promote and encourage the fullest possible use of electric light and power on farms within reasonable distance of any of its transmission lines the board in its discretion shall have power to construct transmission lines to farms and small villages that are not otherwise supplied with electricity at reasonable rates, and to make such rules and regulations governing such sale and distribution of such electric power as in its judgment may be just and equitable: *Provided further*, That the board is hereby authorized and directed to make studies, experiments, and determinations to promote the wider and better use of electric power for agricultural and domestic use, or for small or local industries, and it may cooperate with State governments, or their subdivisions or agencies, with educational or research institutions, and

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with cooperatives or other organizations, in the application of electric power to the fuller and better balanced development of the resources of the region. . . .

SEC. 11. It is hereby declared to be the policy of the Government so far as practical to distribute and sell the surplus power generated at Muscle Shoals equitably among the States, counties, and municipalities within transmission distance. This policy is further declared to be that the projects herein provided for shall be considered primarily as for the benefit of the people of the section as a whole and particularly the domestic and rural consumers to whom the power can economically be made available, and accordingly that sale to and use by industry shall be a secondary purpose, to be utilized principally to secure a sufficiently high load factor and revenue returns which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity. It is further hereby declared to be the policy of the Government to utilize the Muscle Shoals properties so far as may be necessary to improve, increase, and cheapen the production of fertilizer and fertilizer ingredients by carrying out the provisions of this Act.

.....

[SEC. 13. In order to render financial assistance to those States and local governments in which the power operations of the Corporation are carried on and in which the Corporation has acquired properties previously subject to State and local taxation, the board is authorized and directed to pay to said States, and the counties therein, for each fiscal year, beginning July 1, 1940, the following percentages of the gross proceeds derived from the sale of power by the Corporation for the preceding fiscal year as hereinafter provided, together with such additional amounts as may be payable pursuant to the provisions

## CONSERVATION

hereinafter set forth, said payments to constitute a charge against the power operations of the Corporation: For the fiscal year (beginning July 1) 1940, 10 per centum; 1941, 9 per centum; 1942, 8 per centum; 1943,  $7\frac{1}{2}$  per centum; 1944, 7 per centum; 1945,  $6\frac{1}{2}$  per centum; 1946, 6 per centum; 1947,  $5\frac{1}{2}$  per centum; 1948 and each fiscal year thereafter, 5 per centum. "Gross proceeds," as used in this section, is defined as the total gross proceeds derived by the Corporation from the sale of power for the preceding fiscal year excluding power used by the Corporation or sold or delivered to any other department or agency of the Government of the United States for any purpose other than the resale thereof. The payments herein authorized are in lieu of taxation, and the Corporation, its property, franchises and income, are hereby expressly exempted from taxation in any manner or form by any State, county, municipality, or any subdivision or district thereof. . . . ]

.....

SEC. 20. The Government of the United States hereby reserves the right, in case of war or national emergency declared by Congress, to take possession of all or any part of the property described or referred to in this Act for the purpose of manufacturing explosives or for other war purposes. . . .

.....

SEC. 22. To aid further the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and of such adjoining territory as may be related to or materially affected by the development consequent to this Act, and to provide for the general welfare of the citizens of said areas, the President is hereby authorized, by such means or methods as he may deem proper within the limits of appropriations made therefor by Congress, to make such surveys of and gen-

## CONSERVATION

eral plans for said Tennessee basin and adjoining territory as may be useful to the Congress and to the several States in guiding and controlling the extent, sequence, and nature of development that may be equitably and economically advanced through the expenditure of public funds, or through the guidance or control of public authority, all for the general purpose of fostering an orderly and proper physical, economic, and social development of said areas; and the President is further authorized in making said surveys and plans to cooperate with the States affected thereby, or subdivisions or agencies of such States, or with cooperative or other organizations, and to make such studies, experiments, or demonstrations as may be necessary and suitable to that end.

SEC. 23. The President shall, from time to time, as the work provided for in the preceding section progresses, recommend to Congress such legislation as he deems proper to carry out the general purposes stated in said section, and for the especial purpose of bringing about in said Tennessee drainage basin and adjoining territory in conformity with said general purposes (1) the maximum amount of flood control; (2) the maximum development of said Tennessee River for navigation purposes; (3) the maximum generation of electric power consistent with flood control and navigation; (4) the proper use of marginal lands; (5) the proper method of reforestation of all lands in said drainage basin suitable for reforestation; and (6) the economic and social well-being of the people living in said river basin.

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[SEC. 26. Commencing July 1, 1936, the proceeds for each fiscal year derived by the Board from the sale of power or any other products manufactured by the Corporation, and from any other activities of the Corporation including the disposition of any real or personal prop-

## CONSERVATION

erty, shall be paid into the Treasury of the United States at the end of each calendar year, save and except such part of such proceeds as in the opinion of the Board shall be necessary for the Corporation in the operation of dams and reservoirs, in conducting its business in generating, transmitting, and distributing electric energy and in manufacturing, selling, and distributing fertilizer and fertilizer ingredients. A continuing fund of \$1,000,000 is also excepted from the requirements of this section and may be withheld by the Board to defray emergency expenses and to insure continuous operation. . . . ]

[SEC. 26a. The unified development and regulation of the Tennessee River system requires that no dam, appurtenant works, or other obstruction, affecting navigation, flood control, or public lands or reservations shall be constructed, and thereafter operated or maintained across, along, or in the said river or any of its tributaries until plans for such construction, operation, and maintenance shall have been submitted to and approved by the Board; and the construction, commencement of construction, operation, or maintenance of such structures without such approval is hereby prohibited. . . . ]

[SEC. 31. This Act shall be liberally construed to carry out the purposes of Congress to provide for the disposition of and make needful rules and regulations respecting Government properties entrusted to the Authority, provide for the national defense, improve navigation, control destructive floods, and promote interstate commerce and the general welfare. . . . ]

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## GOVERNMENT AND AGRICULTURE

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AGRICULTURE is the paradox of the American political economy. Although by nature and tradition the most individualistic of undertakings, it has for generations been the most fostered, and in recent years the most regulated, of all our major categories of economic enterprise. No subject receives more governmental attention, especially in the Houses of Congress. As usual we search in vain for any mention of this subject in the text of the Constitution, and fall back once again on the blessed words "general welfare" and "commerce."

The national government's concern for the well-being of the farming community is of ancient and impeccable lineage. George Washington, that celebrated farmer, reminded Congress in his last annual message that the advance of the nation would render "the cultivation of the soil more and more an object of public patronage." Not until 1839, however, did Congress make its first specific appropriation for agriculture. The decisive step was taken in 1862, also the year of the Morrill and Homestead Acts, with the creation of a department of Agriculture under the direction of a commissioner. In 1889 this agency was given the status of a full department; the commissioner was raised to the rank of Secretary and granted a seat in the President's cabinet. Since that time the Department of Agriculture has been a model of public service and public administration. Although its activities are legion and its relations to the other branches of both federal and state governments multiform and delicate, it operates on a high plane of nonpartisanship and efficiency. Today the Department of Agri-



## GOVERNMENT AND AGRICULTURE

culture numbers some 75,000 employees, active in every part of the country, indeed, throughout the world, in the improvement and control of American agriculture. The economy bloc in Congress has trouble discovering "excess personnel" in this admirable department.

The work of the Department touches every aspect of this complex subject from the maintenance of an "ever-normal granary" to the publication of pamphlets to help the housewife. Cooperation with state, local, and private agencies is close; in this regard, the use of grants-in-aid is particularly important. In general, the government concerns itself with three main problems of agriculture: production, marketing, and credit. More specifically, the activities of the Department of Agriculture may be reduced to these categories: research, education, collection and dissemination of vital statistics and other information, control of plant and animal diseases, grading of farm products, regulation of commodity exchanges, crop control, price stabilization, conservation, and such diverse problems as rural electrification and crop insurance.

The significant documents that illustrate the work of the department are numbered in the hundreds. For example, the Secretary is charged with executing some fifty regulatory statutes, any one of which makes important if not especially sparkling reading. The farm policy of the United States is now in a period of transition; a new, long-range law concerning the basic question of parity may be expected in 1949 or 1950. Meanwhile, the Department carries on with its dozens of other major activities. The unusual document selected for this chapter furnishes evidence of the scope of this work.

### THE DEPARTMENT OF AGRICULTURE

These are excerpts from the Department's own description of its activities "for the use of the United States Congress" in the Congressional Directory for 1948.

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The Department of Agriculture is charged by the law which created it with acquiring and diffusing among the people of the United States useful information on subjects

## GOVERNMENT AND AGRICULTURE

connected with agriculture, in the most general and comprehensive sense of the term. For that purpose it conducts a comprehensive research and educational program. It is also required to administer many other Federal laws which relate to marketing and distribution of agricultural products; the regulation of interstate commerce in food, fiber, and related products; the protection and management of the national forests, farm credit, agricultural adjustment, conservation and land use, farm tenancy, and rural rehabilitation; rural electrification; and other phases of agriculture.

### BUREAU OF AGRICULTURAL ECONOMICS

The Bureau of Agricultural Economics is the primary agency in the Department of Agriculture for the collection and dissemination of agricultural statistics, for economic research, and for the dissemination of the results thereof. . . .

The Bureau is directly responsible for: (a) acquiring, analyzing, interpreting, and diffusing useful economic information relative to agricultural production and distribution, land utilization and conservation in their broadest aspects, including farm management and practice, utilization of farm and food products, purchasing of farm supplies, farm population and rural life, farm labor, farm finance, insurance and taxation, adjustments in production to probable demands for the different farm and food products, land ownership and values, costs, prices, and income in their relation to agriculture, including causes for their variations and trends; (b) collecting, compiling, abstracting, analyzing, summarizing, interpreting, and publishing economic and statistical data relating to agriculture and food, including crop and livestock estimates, acreage, yield, grades, staples of cotton, stocks, and value of farm crops and numbers, grades, and value of livestock and livestock products on farms; and (c) for aiding in for-

## GOVERNMENT AND AGRICULTURE

mulating programs for authorized activities of the Department.

### LIBRARY

The Department library contains more than 500,000 volumes on agriculture and the related sciences, technology, and economics, and receives currently more than 13,000 periodical and serial publications. . . .

### OFFICE OF FOREIGN AGRICULTURAL RELATIONS

The Office of Foreign Agricultural Relations is responsible for the collection, analysis, and dissemination of information relating to the foreign competition with and demand for agricultural commodities. This includes the compilation of foreign production and marketing data and statistics. It includes also investigation of agricultural and trade policies of foreign governments affecting United States agricultural interests. Such information is disseminated, through the extension service and otherwise, to farmers, farm organization leaders, officials of government, business interests, and research and educational workers.

In cooperation with the Department of State, the Office also directs the program of technical collaboration with Latin-American countries for the development of strategic and complementary agricultural commodities, such as rubber, hard fibers, drugs, insecticides, beverages, and flavorings. Collaboration with other countries is carried on through exchange of experts and students for observation and training, formation of joint agricultural missions, establishment of agricultural stations in the Latin-American collaborating countries, and the supplying of technical experts for service in cooperating countries.

### OFFICE OF ADMINISTRATOR, RESEARCH AND MARKETING ACT

The Research and Marketing Act of 1946 (Public Law 733) was passed by the Congress in August of 1946, and funds for carrying out its provisions became available July 30, 1947. . . .

## GOVERNMENT AND AGRICULTURE

The Act authorizes broad research by Federal, State, and private agencies into problems of agriculture, with special emphasis on development of new uses for agricultural products, on expansion of present uses, and on improvement of marketing practices and facilities. . . .

About a fourth of funds appropriated for the fiscal year 1948 under the Research and Marketing Act goes by direct grant to States, provided they match these funds. More than half the appropriation is for research on (1) new and wider uses of agricultural commodities and their by-products; and (2) developing a more efficient system of marketing agricultural products. . . .

### AGRICULTURAL RESEARCH ADMINISTRATION

Functions of agencies of the Agricultural Research Administration:

#### *Agricultural Research Center*

The administrative organization of the Agricultural Research Center provides for the general supervision of the entire plant and the development and operation of the common facilities required by the organizations of the Department engaged in fundamental agricultural research. The reservation comprises an area of approximately 11,700 acres on which scientific research and experimental activities are conducted by 9 bureaus of the Department and by several other governmental agencies.

#### *Bureau of Agricultural and Industrial Chemistry*

The Bureau of Agricultural and Industrial Chemistry is a research organization engaged in investigations and experiments in the fields of chemistry, physics, and other sciences with the object of developing new and wider industrial uses for agricultural products, and thereby improving agriculture.

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## GOVERNMENT AND AGRICULTURE

### *Bureau of Animal Industry*

The Bureau of Animal Industry conducts research and administers programs primarily concerned with the protection and the development of the livestock industry of the United States; conducts scientific investigations of causes, prevention, and treatment of diseases and parasites of domestic animals, investigates the existence of such maladies, and directs or aids in their control or eradication; carries on experiments in breeding and feeding livestock, poultry, and fur-bearing animals raised in captivity and studies methods of improving the quality and the usefulness of their products; administers Federal acts regarding animal quarantine, diseased animal transportation, humane handling of livestock while in the course of interstate transportation, the production and the distribution of veterinary biological products, meat inspection, and certification of certain canned animal foods.

### *Bureau of Dairy Industry*

The Bureau of Dairy Industry devises methods for improving the producing efficiency of dairy cows through research in dairy cattle breeding, feeding and management; applies the results of such research to farmers' herds through the medium of dairy herd improvement associations; determines the nutritional requirements of dairy cattle for maintaining optimum levels of usefulness, and the value of feeds, feed constituents, and feeding regimes as sources of nutrients; the nutritional value of milk and the effect of nutrition of the cow upon the milk produced, and the physiological factors affecting the general economic usefulness of dairy cattle; improves the quality of dairy products and develops methods of manufacturing new dairy products through chemical, bacteriological, and technological research in the production and handling of milk to preserve its palatability and nutritive and sanitary qualities.

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### *Bureau of Entomology and Plant Quarantine*

The Bureau of Entomology and Plant Quarantine carries on investigations on insects, gives advice on how to control or use them, cooperates with State and local agencies to control and prevent the spread of injurious insects and plant diseases, advises the Secretary of Agriculture on matters relating to plant quarantines, and is responsible for the enforcement of Federal plant quarantines and regulatory orders to prevent the introduction into or spread within the United States of injurious insect pests and plant diseases, and diseases dangerous to the adult honey-bee. . . .

To prevent the entry or spread within the United States of injurious insects and plant diseases it enforces quarantines and restrictive orders, issued under authority provided in various acts of Congress, which prohibit or regulate the importation or interstate movement of injurious insects and of plants and plant products that may introduce or spread insect pests of plant diseases new to or not widely prevalent within the United States. . . .

### *Bureau of Human Nutrition and Home Economics*

The Bureau of Human Nutrition and Home Economics conducts research relating to the utility and economy of food, textiles, and other agricultural products used in the home, makes economic investigations, including housing and household buying, and disseminates information to help families use their resources advantageously.

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Research results are made available through technical and popular publications, visual educational material, and press and radio releases. The Bureau works closely with the Extension Service and other field organizations of the Department of Agriculture, and with other Government agencies, such as the Office of Education, in their programs

## GOVERNMENT AND AGRICULTURE

of educating homemakers in regard to nutrition, and ways of using available goods more effectively for the well-being of their families and for the Nation's good.

### *Bureau of Plant Industry, Soils, and Agricultural Engineering*

The activities of the Bureau of Plant Industry, Soils, and Agricultural Engineering include investigation of plants, principally those of economic importance, soils, fertilizers, cropping methods, and engineering problems concerned with production, transportation, harvesting, and storing of crops.

## COMMODITY EXCHANGE AUTHORITY

The Commodity Exchange Authority administers the Commodity Exchange Act of 1936, as amended.

Its functions are designed to prevent price manipulation and corners affecting agricultural commodities under the act; prevent dissemination of false and misleading crop and market information influencing prices; protect hedgers and other users of the commodity futures markets against cheating, fraud, and manipulative practices; insure the benefits of membership privileges on contract markets to cooperative associations of producers; insure trust-fund treatment of margin moneys and equities of hedgers and other traders and prevent the misuse of such funds by brokers; and provide information to the public regarding trading operations on contract markets.

The Commodity Exchange Authority supervises trading on 18 commodity exchanges designated as contract markets under the act. The following commodities are subject to regulation under the act: wheat, cotton, corn, oats, rye, barley, flaxseed, grain sorghums, millfeeds, rice, butter, eggs, Irish potatoes, wool tops, fats and oils, cottonseed, peanuts, soybeans, and soybean meal.

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### EXTENSION SERVICE

The Extension Service carries on the general educational work in agriculture and home economics of the Department of Agriculture and aids in making available the results of research and investigation in agriculture and home economics to those who can put the information into practice. It coordinates the extension activities of the bureaus of the Department and of the State agricultural colleges and deals with emergency situations involving Department assistance to farmers. It represents the Department in the conduct of cooperative extension work in agriculture and home economics by the State agricultural colleges and the Department under the Smith-Lever, Capper-Ketcham, Bankhead-Jones, and supplementary acts of Congress. Each of the 48 States, and the Territories of Hawaii and Alaska and Puerto Rico, has a director of extension who represents jointly the Department and the State agricultural college in the administration of extension work. In each State the organization consists of a State administrative and supervisory staff, with headquarters in most cases at the State agricultural college, and county agricultural agents, county home demonstration agents, and county club agents, who have their offices usually at the county seats. The distinguishing feature of extension teaching is the field demonstration, carried on through voluntary local leaders, although other educational methods are also utilized to teach the best farm and home practices to farm and rural men, women, boys and girls. . . .

### FARM CREDIT ADMINISTRATION

The Farm Credit Administration provides a coordinated credit system which makes available to farmers and stockmen and their cooperative organizations both long-term and short-term credit. . . .

The United States is divided into 12 Farm Credit dis-



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tricts. In each district are four major credit units located in one central office. These are:

1. A Federal land bank which makes long-term mortgage loans through local cooperatives known as national farm loan associations. About 1,000 association offices serve all parts of the Nation.

2. A production credit corporation which supervises local cooperatives known as production credit associations. There are more than 500 production credit associations located at convenient points throughout the United States.

3. A district bank for cooperatives which makes loans to farmers' marketing, purchasing, and business service cooperatives.

4. A Federal intermediate credit bank which acts as a bank of discount in supplying short-term funds required by production credit associations, bank for cooperatives, other financial institutions making loans to farmers, and farmers' cooperatives.

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### FARMERS HOME ADMINISTRATION

The Farmers Home Administration provides small farmers with credit to improve farming operations or to become owners, and supplements its loans with individual guidance in farm and home management when necessary. . . .

For farmers who cannot obtain the credit they need, at interest not exceeding 5 percent, from banks, cooperative lending agencies or other sources in their communities, the following types of financial assistance are authorized: Operating loans for buying livestock, seed, feed, fertilizer, farm equipment, supplies and other farm needs, for refinancing chattel indebtedness, and for family subsistence; 40-year farm ownership loans to buy, improve or enlarge family-type farms; and mortgage insurance for 40-year loans advanced by private lenders for the same purposes as

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direct farm ownership loans. (Funds have not yet been appropriated for mortgage insurance.) Veterans have preference for real-estate loans and mortgage insurance, and disabled veterans may obtain loans for farms smaller than economic family-type units. Loans are also made in the 17 Western States for water facilities. . . .

### FOREST SERVICE

Congress has designated the Forest Service as the agency of the Federal Government specifically responsible for protecting, developing, and administering certain public lands and their living resources. The job of the Forest Service also has to do with forest land in private ownership, for Congress has authorized it to help States and farm, industrial, and other owners to protect and develop such of their lands as are more valuable in forest growth than as plowland or pasture.

Broadly, responsibilities of the Forest Service are: (1) To initiate and apply in the public interest, locally and nationally, action programs relating to forests and forest products and help with action programs initiated by county, State, and Federal agencies; (2) to protect, develop, and administer in the public interest the national-forest system and its resources, products, values, and services; (3) to conduct research in problems involving protection, development, management, renewal, and continuous use of all resources, products, values, and services of forest lands; (4) to make research and administrative findings and results available to individuals, industries, and public and private agencies generally.

The national-forest system comprises 180,069,994 acres of Government land. On these public properties forestry methods are applied in growing and harvesting timber. Grazing by livestock and big game is scientifically regulated. Sustained and, where possible, increased yields of timber, forage, and wildlife are obtained. Watersheds are

## GOVERNMENT AND AGRICULTURE

managed to safeguard the supply of water for domestic, agricultural, and industrial purposes. Simple, democratic, and inexpensive forms of recreation are encouraged. Provision is also made for other forms of land and resource use.

In research, in national-forest administration, and in cooperation with States and private timberland owners, the Forest Service works in close cooperation with other branches and bureaus of the Department; its policy is guided by the Department's basic purpose of building and maintaining communities and promoting social and economic welfare locally and nationally.

### PRODUCTION AND MARKETING ADMINISTRATION

The Production and Marketing Administration was established within the Department of Agriculture by Secretary's Memorandum No. 1118 dated August 18, 1945.

Under the direction of the Administrator, the functions of the Administration are assigned to the following functional branches, commodity branches, and the Commodity Credit Corporation.

#### *State and County Offices and Committees*

These offices and committees assist the Production and Marketing Administration in the formulation of policies and programs and for carrying out certain programs requiring farmer participation, including: the agricultural and adjustment program, farm marketing quotas, crop insurance operations as assigned, sugar-payment and related production programs; school-lunch, direct distribution, and marketing programs as assigned; and other programs of the Production and Marketing Administration that require direct dealings with farmers. . . .

#### *Commodity Branches*

Cotton Branch, Dairy Branch, Fats and Oils Branch, Fruit and Vegetable Branch, Grain Branch, Livestock

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Branch, Poultry Branch, Sugar Branch, Tobacco Branch.

Each of the commodity branches has, with respect to the commodities over which it has jurisdiction, responsibility for: (1) Production, marketing, adjustment, loan, purchase subsidy, diversion, export, import, price support, farm marketing quotas, processing, distribution, and other programs assigned to the Production and Marketing Administration; (2) conducting marketing research, investigations, and development work, including activities assigned under the Research and Marketing Act of 1946 and other statutes to effect improvements in handling, packaging, standardization, processing, inspection, and developing new products, processes, and uses; (3) conducting service and information work in connection with market news, standardization, inspection, and other programs to effect improvements in marketing of farm products; (4) administering regulatory acts, including marketing agreement and order programs.

### *Commodity Credit Corporation*

The Commodity Credit Corporation was created as an agency of the United States under the laws of the State of Delaware on October 17, 1933, pursuant to Executive Order 6340, dated October 16, 1933. It has an authorized and paid-in capital of \$100,000,000. Under the act of March 8, 1938, as amended, the Corporation is authorized, with the approval of the Secretary of the Treasury, to issue and have outstanding at any one time, bonds, notes, debentures, and other similar obligations in an aggregate amount not to exceed \$4,750,000,000.

## RURAL ELECTRIFICATION ADMINISTRATION

The Rural Electrification Administration administers a program, established by the Rural Electrification Act of 1936, of providing central station electric service for farms, residences, and other establishments in rural areas that

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are without such service. As the principal means of accomplishing this, Rural Electrification Administration makes loans on a self-liquidating basis to local groups, public bodies, and utilities organized under State laws, with preference accorded to farmers' cooperatives and other nonprofit organizations, to finance the construction and operation of rural power systems. These loans are made on a maximum 35-year amortization basis for financing electrical facilities. Supplementary loans also are made to system borrowers for relending to consumers to finance the wiring of premises and acquisition of certain electrical equipment.

In the execution of this program, Rural Electrification Administration renders assistance to borrowers in the organization of cooperatives and on problems involved in the design, construction, and operation of their systems in order to achieve maximum efficiency in providing adequate electric service to their communities at a reasonable cost and protect the Government funds which are secured by mortgages on the facilities. Borrowers are assisted in extending electric service to farms and other rural establishments and in helping consumers obtain maximum benefits of electricity on the farm and in the home. In connection with these activities the Rural Electrification Administration makes studies and disseminates information concerning the progress of rural electrification. . . .

## SOIL CONSERVATION SERVICE

The Soil Conservation Service was established by the Soil Conservation Act of 1935 as a permanent agency to combat the wastage of soil and moisture resources on the farm and grazing lands of the Nation, resulting from soil erosion. Thus, the basic purpose of the Service is to aid in bringing about physical adjustments in proper land use that will better human welfare, conserve natural resources, establish a permanent and balanced agriculture, and re-

## GOVERNMENT AND AGRICULTURE

duce the hazards of floods, drought, and sedimentation. Work toward this objective is carried on through a coordinated program of soil and water conservation and land use. This program involves the conservation planning of individual farms and ranches, the development of group facilities for the use and disposal of water as it affects the land, and work with soil conservation districts. It also involves research and investigations into the causes and remedies of soil erosion.

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## GOVERNMENT AND BUSINESS

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THE business of America is business," said Calvin Coolidge, and his remark, if characteristically cryptic, was largely correct. Most of America's wage earners are employed somewhere in the vast system of production and distribution we call "business," and the well-being of the entire nation is directly dependent upon the state of our commercial and industrial health. It is therefore natural that the federal government should be intimately concerned with the condition and methods of operation of American business. The interests of the government in commerce and industry are pursued along three separate, yet interconnected, paths: regulation, assistance, and operation.

The need for public regulation of private enterprise, the most important of these three techniques, arises naturally in a country where the economy is supposed to be free and the political system democratic. If the American tradition demands that manufacturing, transportation, communications, financing, and merchandising remain in private hands, it also demands that the instruments of business be owned and operated in such a manner as to serve, not prejudice, the welfare of all the people. The first hesitant and bitterly opposed moves toward federal regulation of private business in the public interest were initiated in 1887, with the establishment of the Interstate Commerce Commission, and in 1890, with the passage of the Sherman Anti-Trust Act. Today there is scarcely a single category of economic enterprise that remains unregulated by some agency of the national government. The

## GOVERNMENT AND BUSINESS

independent regulatory commissions are the leading instruments of public control of business. Great are the uses of the commerce power.

The government polices business, but policemen can give assistance as well as orders. Almost every function of the national government—the preservation of order, the maintenance of friendly diplomatic relations, the operation of the postal system, the issuance of a currency—furnishes substantial aid to commerce and industry. Direct assistance is offered by such activities as the regulation of bankruptcy, the compilation and dissemination of business statistics, the maintenance of a system of weights and measures, the provision of many types of credit, and the issuance of patents and copyrights. The protective tariff, too, has certainly helped a number of American businesses to survive and prosper, whatever its effect on the peace of the world and the general economy. The Department of Commerce, through such divisions as the Bureau of the Census, the Bureau of Foreign and Domestic Commerce, the Patent Office, and the National Bureau of Standards, is the principal federal agency engaged in extending positive aid to commerce and industry.

Finally, the government itself has gone into business directly for a variety of practical and social reasons. Enterprises as dissimilar in size and purpose as the Alaska Railroad, the Inland Waterways Corporation, and the Postal Service are an accepted part of our governmental and economic system. The United States, however, remains well in the rear of the world-wide procession toward government ownership and operation of essential industry, to the general satisfaction of most of its people.

Each of these three methods of governmental action is illustrated by documents to be found in this chapter or elsewhere in the book: regulation, by the first selection that follows and the Securities Exchange Act on page 314; assistance, by the second selection included here; operation, by the Tennessee Valley Authority Act on page 276.

### SHERMAN ANTI-TRUST ACT

No statute has had a more checkered history than the Sherman Act of 1890. In general, it has been a disappointment.



## GOVERNMENT AND BUSINESS

Some Presidents have used it with vigor, some have merely talked about using it, others have ignored it completely. The courts have interpreted it almost to death. Yet it served as the anvil on which several notorious trusts were broken. The Sherman Act remains on the books and may be used again, decisively. At any rate, it is a good thing to have a law which proclaims that in a competitive system there must be competition.

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SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or be-

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tween the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several [circuit]<sup>1</sup> courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of

<sup>1</sup> Since amended to read "district," in accordance with Act of March 3, 1911.

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this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

.....

SEC. 8. The word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

## EMPLOYMENT ACT

With the enactment of this broad statute in 1946, the federal government finally acknowledged a general responsibility for the maintenance of a healthy American economy. Although the original legislative proposals of the "full employment" school of economic thought were watered down considerably in their passage through the congressional mill, the Employment Act nevertheless represents a new concept of the relation of government to business. It also represents an open acknowledgment of presidential leadership in the legislative process.

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## DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy, with the assistance and cooperation of industry, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which

## GOVERNMENT AND BUSINESS

there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power.

### ECONOMIC REPORT OF THE PRESIDENT

SEC. 3. (a) The President shall transmit to the Congress within sixty days after the beginning of each regular session (commencing with the year 1947) an economic report (hereinafter called the "Economic Report") setting forth (1) the levels of employment, production, and purchasing power obtaining in the United States and such levels needed to carry out the policy declared in section 2; (2) current and foreseeable trends in the levels of employment, production, and purchasing power; (3) a review of the economic program of the Federal Government and a review of economic conditions affecting employment in the United States or any considerable portion thereof during the preceding year and of their effect upon employment, production, and purchasing power; and (4) a program for carrying out the policy declared in section 2, together with such recommendations for legislation as he may deem necessary or desirable.

(b) The President may transmit from time to time to the Congress reports supplementary to the Economic Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 2.

(c) The Economic Report, and all supplementary reports transmitted under subsection (b) shall, when transmitted to Congress, be referred to the joint committee created by section 5.

### COUNCIL OF ECONOMIC ADVISERS TO THE PRESIDENT

SEC. 4. (a) There is hereby created in the Executive Office of the President a Council of Economic Advisers (here-

inafter called the "Council"). The Council shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 2, and to formulate and recommend national economic policy to promote employment, production, and purchasing power under free competitive enterprise. Each member of the Council shall receive compensation at the rate of \$15,000 per annum. The President shall designate one of the members of the Council as chairman and one as vice chairman, who shall act as chairman in the absence of the chairman.

.....

(c) It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Economic Report;

(2) to gather timely and authoritative information concerning economic developments and economic trends, both current and prospective, to analyze and interpret such information in the light of the policy declared in section 2 for the purpose of determining whether such developments and trends are interfering, or are likely to interfere, with the achievement of such policy, and to compile and submit to the President studies relating to such developments and trends;

(3) to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 2 for the purpose of determining the extent to which such programs and activities are contributing, and the extent to which they are not contributing, to the achievement of such policy, and to make recommendations to the President with respect thereto;

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(4) to develop and recommend to the President national economic policies to foster and promote free competitive enterprise, to avoid economic fluctuations or to diminish the effects thereof, and to maintain employment, production, and purchasing power;

(5) to make and furnish such studies, reports thereon, and recommendations with respect to matters of Federal economic policy and legislation as the President may request.

(d) The Council shall make an annual report to the President in December of each year.

(e) In exercising its powers, functions and duties under this Act—

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, as it deems advisable;

(2) the Council shall, to the fullest extent possible, utilize the services, facilities, and information (including statistical information) of other Government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided.

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### JOINT COMMITTEE ON THE ECONOMIC REPORT

SEC. 5. (a) There is hereby established a Joint Committee on the Economic Report, to be composed of seven Members of the Senate, to be appointed by the President of the Senate, and seven Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. The party representation on the joint committee shall as nearly as may be feasible reflect the relative membership of the majority and minority parties in the Senate and House of Representatives.

(b) It shall be the function of the joint committee—

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(1) to make a continuing study of matters relating to the Economic Report;

(2) to study means of coordinating programs in order to further the policy of this Act; and

(3) as a guide to the several committees of the Congress dealing with legislation relating to the Economic Report, not later than [March 1]<sup>1</sup> of each year . . . to file a report with the Senate and the House of Representatives containing its findings and recommendations with respect to each of the main recommendations made by the President in the Economic Report, and from time to time to make such other reports and recommendations to the Senate and House of Representatives as it deems advisable.

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<sup>1</sup> As amended by act of February 2, 1948.

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GOVERNMENT AND FINANCE

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**F**INANCE—"money, banking, and credit"—is an aspect of the American economy to which the national government devotes particular attention. For one thing, the control of the currency is completely a public and national responsibility. The government is considered to possess whatever powers the modern nation needs to issue, support, inflate, or deflate metallic or paper currency. The conduct of all financial affairs in this country rests upon, and is conditioned by, that fundamental fact.

It is difficult to classify the other responsibilities of the federal government in the field of private finance, which is plainly not so private as some people think. As in the case of business generally, the government regulates some phases of banking and credit, protects and fosters others, and itself enters on a huge scale into numerous areas where private initiative is unwilling or unable to operate. In many instances one federal agency employs all three methods. It is impossible to give here a complete picture of the government's operations in each special area of private finance. An impression of their complexity and significance may perhaps be conveyed by a review of a few of the more essential agencies that control, protect, or supplement the financial activities of the American people:

The *Federal Reserve System* (1913) is both a fiscal agency for the national government and an instrument for regulating and assisting private banking. All national banks must be, and all other banks may be, members of the system. The supervising agency is the seven-man Board of Governors, which has



## GOVERNMENT AND FINANCE

authority to alter reserve requirements, regulate rates of interest, and examine books and assets of member banks. The system is organized into twelve regions, in each of which there is a Federal Reserve Bank. These branches are "bankers' banks," owned and managed by and for the member banks of the particular region.

The *Federal Deposit Insurance Corporation* (1933) was set up to provide insurance for individual deposits. Membership in this scheme is compulsory for all banks in the Federal Reserve System, and other banks may seek admittance. All deposits up to \$5,000 are insured in full, deposits over that amount on a descending scale. More than ninety per cent of all individual depositors in the United States are thus insured against bank failures. The FDIC is an excellent example of government entrance into a field where private enterprise is unable to answer the national need.

The *Reconstruction Finance Corporation* (1932), a temporary agency that is showing signs of permanence, was instituted originally to make loans to banks and key industries during the Great Depression. Since that time the RFC has been authorized to make all manner of loans to all manner of enterprises. For example, during the recent war, the RFC was granted important new powers to extend credit to private industries engaged in war production.

The *Postal Savings System* (1910) provides a sure refuge and a low but steady rate of interest for people who do not like to put their money in banks. According to the Postmaster General, there are four million such people in the United States.

The *Farm Credit Administration* (1933), which unified a variety of agencies for farm credit purposes, is only one of many specialized financial activities of the national government. The FCA is briefly described on pages 297–298.

## SECURITIES EXCHANGE ACT

The Securities Exchange Commission, one of the major reforms instituted by the New Deal, is the particular agency selected for study in this chapter. The Commission neither operates nor encourages the nation's financial exchanges; its purpose is to regulate them in the interest of the general

and investing public. In addition to the duties described in this law, the SEC administers the Securities Act of 1933, the Public Utility Holding Company Act of 1935, the Investment Advisers Act of 1940, and several other statutes.

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TITLE I—REGULATION OF SECURITIES EXCHANGES

NECESSITY FOR REGULATION AS PROVIDED IN THIS TITLE

SEC. 2. For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions:

- (1) Such transactions (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are effected by means of the mails and instrumentalities of interstate commerce; (b) constitute an important part of the current of interstate commerce; (c) involve in large part the securities of issuers engaged in interstate commerce; (d) involve the use of credit, directly affect the financing of trade, industry, and transportation in interstate commerce, and directly affect and influence the volume of interstate commerce; and affect the national credit.

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## GOVERNMENT AND FINANCE

(3) Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective operation of the national banking system and Federal Reserve System.

(4) National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit.

### DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) The term “exchange” means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally under-

stood, and includes the market place and the market facilities maintained by such exchange.

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(3) The term "member" when used with respect to an exchange means any person who is permitted either to effect transactions on the exchange without the services of another person acting as broker, or to make use of the facilities of an exchange for transactions thereon without payment of a commission or fee or with the payment of a commission or fee which is less than that charged the general public, and includes any firm transacting a business as broker or dealer of which a member is a partner, and any partner of any such firm.

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(9) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

(10) The term "security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

.....

## GOVERNMENT AND FINANCE

### SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each commissioner shall receive a salary at the rate of \$10,000 a year and shall hold office for a term of five years. . . .

### TRANSACTIONS ON UNREGISTERED EXCHANGES

SEC. 5. It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange (1) is registered as a national securities exchange under section 6 of this title, or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

### REGISTRATION OF NATIONAL SECURITIES EXCHANGES

SEC. 6. (a) Any exchange may be registered with the Commission as a national securities exchange under the

## GOVERNMENT AND FINANCE

terms and conditions hereinafter provided in this section, by filing a registration statement in such form as the Commission may prescribe, containing the agreements, setting forth the information, and accompanied by the documents, below specified:

(1) An agreement (which shall not be construed as a waiver of any constitutional right or any right to contest the validity of any rule or regulation) to comply, and to enforce so far as is within its powers compliance by its members, with the provisions of this title, and any amendment thereto and any rule or regulation made or to be made thereunder;

(2) Such data as to its organization, rules of procedure, and membership, and such other information as the Commission may by rules and regulations require as being necessary or appropriate in the public interest or for the protection of investors;

(3) Copies of its constitution, articles of incorporation with all amendments thereto, and of its existing bylaws or rules or instruments corresponding thereto, whatever the name, which are hereinafter collectively referred to as the "rules of the exchange"; and

(4) An agreement to furnish to the Commission copies of any amendments to the rules of the exchange forthwith upon their adoption.

(b) No registration shall be granted or remain in force unless the rules of the exchange include provision for the expulsion, suspension, or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade, and declare that the willful violation of any provisions of this title or any rule or regulation thereunder shall be considered conduct or proceeding inconsistent with just and equitable principles of trade.

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### MARGIN REQUIREMENTS

SEC. 7. (a) For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the

## GOVERNMENT AND FINANCE

Federal Reserve Board<sup>1</sup> shall, prior to the effective date of this section and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security) registered on a national securities exchange. . . .

(b) Notwithstanding the provisions of subsection (a) of this section, the Federal Reserve Board, may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

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### PROHIBITION AGAINST MANIPULATION OF SECURITY PRICES

SEC. 9. (a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

(1) For the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof. . . .

(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a na-

<sup>1</sup> Now the Board of Governors of the Federal Reserve System.

## GOVERNMENT AND FINANCE

tional securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the prices of such security.

(4) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

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### REGULATION OF THE USE OF MANIPULATIVE AND DECEPTIVE DEVICES

SEC. 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

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## GOVERNMENT AND FINANCE

### REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12 (a) It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title and the rules and regulations thereunder.

(b) A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structure and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

## GOVERNMENT AND FINANCE

(E) remuneration to others than directors and officers exceeding \$20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by independent public accountants;

(J) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by independent public accountants; and

(K) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

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## PERIODICAL AND OTHER REPORTS

SEC. 13. (a) Every issuer of a security registered on a national securities exchange shall file the information, documents, and reports below specified with the exchange (and shall file with the Commission such duplicate originals thereof as the Commission may require), in accordance with such rules and regulations as the Commission

## GOVERNMENT AND FINANCE

may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) Such information and documents as the Commission may require to keep reasonably current the information and documents filed pursuant to section 12.

(2) Such annual reports, certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports, as the Commission may prescribe.

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### ACCOUNTS AND RECORDS, REPORTS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC. 17. (a) Every national securities exchange, every member thereof, every broker or dealer who transacts a business in securities through the medium of any such member. . . . shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

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### POWERS WITH RESPECT TO EXCHANGES AND SECURITIES

SEC. 19. (a) The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors—

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(1) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to withdraw the registration of a national securities exchange if the Commission finds that such exchange has violated any provision of this title or of the rules and regulations thereunder or has failed to enforce, so far as is within its power, compliance therewith by a member or by an issuer of a security registered thereon.

(2) After appropriate notice and opportunity for hearing, by order to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to withdraw, the registration of a security if the Commission finds that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder.

(3) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a national securities exchange any member or officer thereof whom the Commission finds has violated any provision of this title or the rules and regulations thereunder, or has effected any transaction for any other person who, he has reason to believe, is violating in respect of such transaction any provision of this title or the rules and regulations thereunder.

(4) And if in its opinion the public interest so requires, summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange for a period not exceeding ninety days.

(b) The Commission is further authorized, if after making appropriate request in writing to a national securities exchange that such exchange effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commis-

## GOVERNMENT AND FINANCE

sion determines that such exchange has not made the changes so requested, and that such changes are necessary or appropriate for the protection of investors or to insure fair dealing in securities traded in upon such exchange or to insure fair administration of such exchange, by rules or regulations or by order to alter or supplement the rules of such exchange (insofar as necessary or appropriate to effect such changes) in respect of such matters as (1) safeguards in respect of the financial responsibility of members and adequate provision against the evasion of financial responsibility through the use of corporate forms or special partnerships; (2) the limitation or prohibition of the registration or trading in any security within a specified period after the issuance or primary distribution thereof; (3) the listing or striking from listing of any security; (4) hours of trading; (5) the manner, method, and place of soliciting business; (6) fictitious or numbered accounts; (7) the time and method of making settlements, payments, and deliveries and of closing accounts; (8) the reporting of transactions on the exchange and upon tickers maintained by or with the consent of the exchange, including the method of reporting short sales, stopped sales, sales of securities of issuers in default, bankruptcy or receivership, and sales involving other special circumstances; (9) the fixing of reasonable rates of commission, interest, listing, and other charges; (10) minimum units of trading; (11) odd-lot purchases and sales; (12) minimum deposits on margin accounts; and (13) similar matters.

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### INVESTIGATIONS; INJUNCTIONS AND PROSECUTION OF OFFENSES

SEC. 21. (a) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation

## GOVERNMENT AND FINANCE

thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this title relates.

(b) For the purpose of any such investigation, or any other proceeding under this title, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

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## GOVERNMENT AND LABOR

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LABOR is another aspect of the American economy to which the federal government paid little attention before 1933 and has paid a great deal ever since. The interests of the government in the problems of labor are pursued along two general lines. One group of laws and agencies deals with the workers as such and seeks to improve their earning capacity, working conditions, and general well-being. Another group deals with them as members of labor organizations and seeks to regulate the complex pattern of labor relations in the interest of industrial peace. Most federal labor laws are based on the commerce power; since 1937 this power has been considered as extending to the regulation of labor conditions that "burden," "affect," or "obstruct" interstate commerce.

Laws designed to foster the welfare of the worker first appeared in the statute books around the turn of the century. Prior to 1933 government and railroad employees, workers in two fields over which the power of Congress to legislate cannot be challenged, were singled out for particular attention. An outstanding instance of congressional action was the Adamson act of 1916, which established the eight-hour day for interstate railroad workers. Among the important New Deal laws concerning this subject were the short-lived National Industrial Recovery Act of 1933, which authorized the inclusion of maximum hours and minimum wages in the famous "codes of fair competition"; the Walsh-Healey Act of 1936, which requires contractors producing goods for the federal government to conform to regulations concerning wages, hours, and conditions of work; and the Fair Labor Standards Act of 1938,

## GOVERNMENT AND LABOR

which sets minimum wages and maximum hours and outlaws child labor. More than twenty million workers are covered by this statute. It should also be remembered that the working man is the chief beneficiary of the Social Security program. Most laws for the protection and betterment of labor are administered by the Department of Labor, established in 1913.

The purpose of the federal government in the enactment and enforcement of the laws that regulate labor-management relations is to promote the welfare of all the people by "diminishing the causes of labor disputes burdening or obstructing interstate and foreign commerce." Opinions differ sharply concerning the causes of labor disputes and the methods of diminishing them. In 1935 a Congress openly sympathetic to the rights and interests of union labor passed the Wagner (National Labor Relations) Act, which fostered labor organization and proclaimed the government's determination to encourage the processes of collective bargaining. The purpose of the act was to raise disorganized (because unorganized) labor to a level with management. The Wagner Act furnished a powerful impetus to the growth of unions, so powerful that in 1947 another Congress decided that the inequality no longer existed—indeed, that the scales had been tipped the other way—and drastically amended the law of 1935. It is this amending statute, the Labor-Management Relations Act of 1947, that provides the framework for the federal government's present actions in this important field. While the National Labor Relations Board moves ahead in its enforcement of the act, the political storms continue to rage about it. A new labor law, combining the best features of the Wagner and Taft-Hartley Acts, stands high on the agenda of the Eighty-first Congress.

### LABOR-MANAGEMENT RELATIONS ACT

The Taft-Hartley Act, which takes its name from the chairmen of the Senate and House labor committees in the Eightieth Congress, would fill forty-five pages in this book. Its most publicized sections have been included here. The reintroduction of "government by injunction" is the feature to which labor unions have objected most violently.



GOVERNMENT AND LABOR

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS  
ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

.....  
“NATIONAL LABOR RELATIONS BOARD

“SEC. 3. (a) The National Labor Relations Board (hereinafter called the ‘Board’) created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

.....  
“(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

“(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years.

## GOVERNMENT AND LABOR

The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

"SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of \$12,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. . . .  
.....

### "RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

### "UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . . ;

"(3) by discrimination in regard to hire or tenure of

## GOVERNMENT AND LABOR

employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . ;

“(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

“(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

“(b) It shall be an unfair labor practice for a labor organization or its agents—

“(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7; *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

“(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) . . . ;

“(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

“(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or re-

quiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work . . . ;

“(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances . . . ; and

“(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

“(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

“(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employ-

## GOVERNMENT AND LABOR

ment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

“(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

“(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

“(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

“(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later. . . .

### “REPRESENTATIVES AND ELECTIONS

“SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes,

## GOVERNMENT AND LABOR

shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect. . . .

“(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. . . .

“(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board . . . ; the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

.....

“(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organiza-

## GOVERNMENT AND LABOR

tion under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

“(1) the name of such labor organization and the address of its principal place of business;

“(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded \$5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

“(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

“(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

“(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

“(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

## GOVERNMENT AND LABOR

and (B) can show that prior thereto it has—

“(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

“(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

.....

“(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. . . .

### “PREVENTION OF UNFAIR LABOR PRACTICES

“SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. . . .

“(b) Whenever it is charged that any person has en-



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gaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. . . . The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. . . .

“(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: . . . . If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. . . .

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“(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or

if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. . . . The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended.

“(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition

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praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) . . . .

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(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

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### “LIMITATIONS

“SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

“SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for

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the purpose of any law, either national or local, relating to collective bargaining.

“(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

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### TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

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SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the “Service,” except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the “Director”), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of \$12,000 per annum. The Director shall not engage in any other business, vocation, or employment.

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#### FUNCTIONS OF THE SERVICE

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor

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dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

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## NATIONAL EMERGENCIES

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof

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engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

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SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing

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thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended.

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such bal-

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lot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

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### TITLE III

#### SUITS BY AND AGAINST LABOR ORGANIZATIONS

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

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#### BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting com-



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merce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business for any other person; . . . .

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. . . .

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## STRIKES BY GOVERNMENT EMPLOYEES

SEC. 305. It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency.

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